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IN THE

Supreme Court of the United States.

October Term, 1890.

THE UNITED STATES

vs.

THE DALLES MILITARY ROAD CO. and THE EASTERN OREGON LAND COMPANY.

No. 1,218.

THE UNITED STATES

vs.

THE OREGON CENTRAL MILITARY ROAD CO. and CALIFORNIA and OREGON LAND COMPANY ET AL.

No. 1,219.

JAMES K. KELLY,
Solicitor for Eastern Oregon Land Co.

DOLPH, BELLINGER, MALLORY & SIMON,
Solicitors for the California and Oregon Land Co.

IN THE

Supreme Court of the United States.

THE UNITED STATES *vs.* THE DALLES MILITARY ROAD CO. and THE EASTERN OREGON LAND COMPANY.	No. 1,218.
THE UNITED STATES *vs.* THE OREGON CENTRAL MILITARY ROAD CO. and CALIFORNIA and OREGON LAND CO. *et al.*	No. 1,219.

These are suits by the United States for a forfeiture of lands granted by Congress to the State of Oregon to aid in the construction of two military wagon roads, and for the cancellation of patents issued therefor, on the ground that the terms of the grants have not been complied with, and that the certification upon which patents were issued were procured through the fraudulent representations of the officers, stockholders, and agents of the defendants, The Dalles Military Road Company and The Oregon Central Military Road Company, the grantees, respectively, from the State, of the said grants of land, and upon the further ground, as to the former Company,

that the Governor acted fraudulently in certifying the completion of the road.

Briefly, the facts are these:

On February 25, 1867, Congress granted to the State of Oregon "to aid in the construction of a military wagon road from Dalles City, on the Columbia river, by way of Camp Watson, Canyon City, and Mormon or Humboldt Basin, to a point on Snake river, opposite Fort Boise, in Idaho Territory, alternate sections of public lands, designated by odd numbers, to the extent of three sections in width on each side of said road."

The act provided that the lands granted should be exclusively applied to the construction of said road, and to no other purpose, and should be disposed of as the work progressed; that said road should "remain a public highway for the use of the Government of the United States, free from tolls or other charges, upon the transportation of any property, troops, or mails of the United States."

The further material provisions of the act are as follows:

"SEC. 3. *And be it further enacted*, That the said road shall be constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon may prescribe.

"SEC 4. *And be it further enacted*, That the State of Oregon is authorized to locate and use in the construction of said road an additional amount of public lands, not previously reserved to the United States, nor otherwise disposed of, and not exceeding ten miles in distance from it, equal to the amount reserved from the operation of this act, in the first section of the same, to be selected in alternate sections, as provided in section first of this act.

"SEC. 5. *And be it further enacted*, That lands hereby granted to said State shall be disposed of only in the following manner, that is to say, when the Governor of said State shall certify to the Secretary of the Interior that ten continuous miles of said road are completed,

then a quantity of the land hereby granted, not to exceed thirty sections, may be sold; and so on, from time to time, until said road shall be completed; and if said road is not completed within five years, no further sales shall be made, and the lands remaining unsold shall revert to the United States." (14 U. S., 409.)

This grant was on October 20, 1868, granted by the State of Oregon to the defendant, the Dalles Military Road Company, "for the purpose of aiding said company in constructing the road mentioned in the act of Congress," and was so granted "upon the conditions and limitations" prescribed in the said act of Congress. (Session Laws of Oregon 1868, page 3. See Appendix "A.")

The grant involved in the suit against the Oregon Central Military Road Company and the California and Oregon Land Company (the latter company being the assignee of the former) was made by act of Congress of July 2, 1864, 13 Stat. U. S., 355, and was "to aid in the construction of a military wagon road from Eugene City, by way of Middle Fork of Willamette river, and the most feasible pass in Cascade range of mountains, near Diamond Peak, to the eastern boundary of the State."

This grant was of the same quantity of land per mile of road as that in aid of the Dalles Military Road, and was subject to the same conditions and limitations, and it was on October 24, 1864, granted by the State to the Oregon Central Military Road Company, subject to the conditions and limitations prescribed in the act of Congress. (Session Laws of Oregon, 1864, p. 37. See Appendix "B.")

On December 26, 1866, Congress amended this last grant by granting to the State such odd sections and parts thereof within six miles on each side of the road as should be sufficient to supply any deficiency in the

original grant, occasioned by sales or reservations of lands by the attachment of homestead or pre-emption rights, or by the exemption, for any reason, of lands within the limits of such grant.

14 U. S. Stat., 374.

On March 13, 1869, Congress further amended the granting act of July 2, 1864, by extending the time within which the road from Eugene City to the eastern boundary of the State should be completed to July 2, 1872.

15 U. S. Stat., 338.

On June 18, 1874, Congress enacted the following law:

"An act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases.

"Whereas certain lands have heretofore, by acts of Congress, been granted to the State of Oregon to aid in the construction of certain military wagon roads in said State, and there exists no laws providing for the issuing of formal patents for said lands; therefore—

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases when the roads, in aid of the construction of which said lands were granted, are shown by the certificate of the Governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall by public act have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon their payment of the necessary expenses thereof; *Provided*, That this shall not be construed to revive any land grant already expired nor to create any new rights of any kind, except to provide for issuing patents for lands to which the State is already entitled."

18 U. S. Stat., 80.

These suits are brought in pursuance of an act of Congress of March 2, 1889, passed in response to a memorial by the Oregon Legislature, in which it is represented that the wagon roads in question were not completed as required by the granting acts, and that the certification of lands coterminous with unconstructed portions of the roads by the Department of the Interior were unauthorized and illegal.

This act provides that suits shall be brought "to determine the questions of the seasonable and proper completion of said roads in accordance with the terms of the granting acts, either in whole or in part; the legal effect of the several certificates of the Governors of the State of Oregon, of the completion of said roads, and the right of resumption of such granted lands by the United States, and to obtain judgments (which the Court is hereby authorized to render) declaring forfeited to the United States all of such lands as are coterminous with the part or parts of either of said wagon roads which were not constructed in accordance with requirements of the granting acts, and setting aside patents which have issued for any such lands, saving and preserving the rights of all *bona fide* purchasers of either of said grants or of any portions of said grants for a valuable consideration, if any such there be." The act further provides that such suits "shall be tried and adjudicated in like manner and by the same principles and rules of jurisprudence as other suits in equity are tried therein."

Stats. U. S. 1888–'89, p. 950.

Under the authority of this last act, these suits were begun in August, 1889.

The bills of complaint allege the substance of the several acts of Congress and of the Legislature of Oregon above referred to. They further allege that the Road Companies, defendants, are incorporated under the gen-

eral incorporation laws of Oregon. That long prior to the road grants by Congress, the Legislature of Oregon, on October 16, 1862, passed "An act providing for private incorporations and the appropriation of private property therefor," which, among other things, provided that any road, other than a railway constructed by a corporation formed under said law, should be cleared of standing timber of a width of thirty feet on each side of the same, and should be otherwise constructed in the manner particularly provided for in the act—(this last act of the Legislature being a part of the general toll road laws of Oregon, and still in force.) *§§ 29, 30, Miscellaneous Laws of Oregon, chap. 7, compilation of 1872, p. 531.* It is also alleged that the aided roads were never built in whole or in part, and that they were not and *have not been maintained as public* highways by the defendants or by any person claiming any interest in the lands granted. That the Governors of Oregon certified that the roads had been completed as required by the acts of Congress.

In the first case the Governor is charged with having acted fraudulently, through the procurement of the officers, agents, and stockholders of the Dalles Company. (*See Record Dalles Co., p. 6, par. 6.*) In the second case it is charged that the Governors were deceived and induced to issue such certificates through the false representations of the officers, agents, and stockholders of the Oregon Central Company.

See Record Central Co., p 5, par. 6.

It appears from the bills of complaint that the certificate of the Governor of Oregon, certifying the completion of the Dalles Road, was issued June 23, 1869, and the certificates of completion of the Oregon Central Road were issued July 27, 1866, as to the first fifty miles; on November 26, 1867, as to an additional forty-two miles, and on January 12, 1870, as to the completion of the

entire road. And it also appears that the Secretary of the Interior has certified and issued patents for a large part of each grant. The bills charge that the present holders of the grants, at the time of the execution and delivery of the deeds to them, had full knowledge that the roads provided for in said acts of Congress had not been constructed as required by said act of Congress.

Dalles Record, p. 9, par. 16.
Central Company Record, p. 11, par. 21.

Exceptions were sustained to so much of the bills as allege the act of the Legislature of Oregon, providing for private incorporations, and as to the manner in which roads constructed by them shall be built, and to so much of the bills as charge that the defendants have failed to *maintain* the roads provided for.

Dalles Record, pp. 45–49.

PLEAS.

The defendants, by leave of the Court, filed two pleas to the bill in each case, supported by answers, under oath, denying the fraud alleged in the bill as prescribed by Equity Rule 32.

The following are the pleas filed by the Dalles Military Road Company, and those of the Oregon Central Company are substantially the same (*Dalles Co. Record, pp. 56–60*):

I.

THE UNITED STATES, Plaintiff,

vs.

THE DALLES MILITARY ROAD COMPANY, James K. Kelly, C. N. Thornbury, Eleanor Martin, P. J. Martin, D. V. B. Henarie, Mary A. Henarie, T. J. Martin, Margaret A. Martin, James V. Martin, Thomas S. Martin, Ada B. Martin, Edward Martin, Barton L. Walker, Genevieve E. Walker, and the Eastern Oregon Land Company, Defendants.

The joint and several plea and accompanying answer of the defendants, D. V. B. Henarie, Eleanor Martin, P. J. Martin, and the Eastern Oregon Land Company, defendants to the bill of complaint of the United States, complainant. These defendants, by protestation not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged for plea to the whole of the said bill, or to so much and such part of the said bill as prays that the land granted to the State of Oregon by the act of Congress of date February 25, 1867, and now owned by these defendants, be decreed forfeited to the United States, Say:—

That George L. Woods, then the Governor of Oregon, without any false or fraudulent representations having at any time been made to him by the officers, stockholders, or agents of The Dalles Military Railroad Company, or any other person or persons in its or their interest, and without any one or more of them having falsely or fraudulently induced him to certify that the road of said company was constructed in accordance with law; and without any fraud whatever on his part, on the 23d day of June, 1869, certified that the plat or map of The Dalles Military Road had been filed in his office by The Dalles

Military Road Company and showed the location of the line of route as actually surveyed, and upon which its road had been constructed, in accordance with the requirements of the act of Congress approved February 25, 1867, entitled "An act granting land to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia river, to Fort Boise, on Snake river"; and also with an act of the Legislative Assembly of the State of Oregon, approved October 20, 1868, entitled "An Act donating certain land to Dalles Military Road Company."

That he had made a careful examination of said road since its completion and that the same was built in all respects as required by the above recited acts, and that said road was then accepted, as will more fully appear by said certificate of the Governor of Oregon, a copy of which is set forth in paragraph five (5) in the bill of complaint and made a part of this plea.

That on the 31st of May, 1876, The Dalles Military Road Company, for a valuable consideration, to wit, the sum of $125,000 to it paid by Edward Martin, of San Francisco, in the State of California, sold and conveyed all the said lands belonging to it, to said Edward Martin, his heirs and assigns.

That by sundry mesne conveyances from the said Edward Martin to the Eastern Oregon Land Company, one of these defendants, the title to said lands became and now is vested in said Eastern Oregon Land Company.

II.

And for a second plea filed by leave of the Court, these defendants say:

That on June 23, 1869, the Governor of Oregon certified that the plat or map of The Dalles Military Road had been duly filed in the executive office; that it showed the location of the line of route upon which said road was constructed in accordance with the requirements of the act of Congress approved February 25, 1867, entitled "An Act granting land to the State of Oregon to aid in the construction of the military wagon road from Dalles City on the Columbia river to Fort Boise on Snake river," and with the act of the Legislative Assembly of the State

of Oregon, approved October 20, 1868, entitled "An Act donating certain land to The Dalles Military Road Company."

And the Governor of Oregon then further certified that he had made a careful examination of said road since its completion, and that the same was built in all respects as required by the said above recited acts, and was then accepted, as will more fully appear by the fifth (5) paragraph of the said bill of complaint.

That on December 18, 1869, the Commissioner of the General Land Office withdrew from sale the odd-numbered sections within three miles from each side of the said road in favor of the Dalles Military Road Company.

That Congress, by an act approved June 18, 1874, entitled "An Act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases," provided that in all cases where lands had been granted by Congress to the State of Oregon to aid in the construction of certain military wagon roads; and the certificate of the Governor of Oregon should show that any such road has been constructed and completed as in said acts required, patents should be issued in due form to the State of Oregon for such lands, unless the State should by public act have transferred its interest in such lands to any corporation, in which case the said lands were to be patented to such corporation, as will more fully appear by the eleventh (11) paragraph of the bill of complaint.

That Edward Martin, then a resident of San Francisco, in the State of California, placing confidence in the truth of the certificate of the Governor of the State of Oregon, dated June 23, 1869, that the said road had been duly constructed according to the requirements of the said act of Congress approved February 25, 1867; and also placing confidence in the order of the Commissioner of the General Land Office, dated December 28, 1869, withdrawing the said lands from sale in favor of The Dalles Military Road Company; and also believing that the said act of Congress approved June 18, 1874, would be carried into effect by issuance of patents to The Dalles Military Road Company for all of said lands, did, on the 31st day of May, 1876, purchase in good faith for a valuable consideration, to wit, the sum of $125,000, then paid by said Edward Martin to said Dalles Military

Road Company, all the lands embraced in the grant to said company, except such portions thereof as had previously been sold by it. That previous to the time of paying the sum of $125,000 purchase money, and receiving said deed, the said Edward Martin had no notice of any failure on part of The Dalles Military Road Company to construct and complete the said road, in accordance with the requirements of said act of Congress approved February 25, 1867, and he had no reason to believe that the same was not constructed in accordance with the said act of Congress, but, on the contrary, he was informed and believed that said road had been constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road.

That thereupon the said Edward Martin became and was the *bona-fide* purchaser for a valuable consideration of all said lands then owned by the Dalles Military Road Company, which were then conveyed to him by said corporation, as will more fully appear by its deed, a copy of which is attached to the bill of complaint marked Exhibit B, and dated May 31, 1876.

That the said Edward Martin afterwards, to wit, on January 31, 1877, executed and delivered to D. V. B. Henarie, one of the defendants, a deed of trust, wherein he acknowledged that said D. V. B. Henarie was the owner of the undivided fourth of all the lands mentioned and described in said deed of the Dalles Military Road Company to said Edward Martin, and that he held the same in trust for said D. V. B. Henarie, which deed of trust was recorded in Wasco County, State of Oregon, on May 7, 1884, in vol. A, page 265, in miscellaneous records; also in Baker County, Oregon, on May 10, 1884, in vol. 2, page 317, in record of leases and agreements, and also in Grant County, Oregon, on May 27, 1884, in book A, page 584, of miscellaneous records.

That when said Edward Martin purchased said lands on May 31, 1876, as hereinbefore stated, said D. V. B. Henarie paid the one-fourth of the consideration for the same, to wit, one-fourth of $125,000. That he made said purchase in good faith, relying upon the certificate of the Governor of Oregon that said road had been constructed according to the act of Congress approved February 25, 1867, and also relying upon the act of Congress

approved June 18, 1874, that patents in due form of law would be issued to the Dalles Military Road Company for said lands. That he had no notice at the time he paid one-fourth of said purchase money, and when said deed was executed and delivered to said Edward Martin, that said road had not been constructed and completed by the Dalles Military Road Company, as required by said act of Congress of February 25, 1867.

That afterwards, to wit, on the 12th day of May, 1880, the said Edward Martin died intestate in the city of San Francisco, in the State of California, leaving a widow, the defendant, Eleanor Martin, and leaving as his heirs at law Thomas S. Martin, Edward Martin, and Sarah A. F. Wilcox, who were then of lawful age, and James V. Martin, Genevieve E. Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, who were then minors. That in March, 1882, the interest of said minors in said lands was sold at a guardian's sale by order of the county court of Wasco County, Oregon, at which sale the interest of said minors in said lands was purchased in good faith for the valuable consideration by Peter Donahue and James Phelan, of San Francisco, California, as will more fully appear by Exhibit C, attached to the bill of complaint. That on August 3, 1882, the said James Phelan sold his interest in said lands to Peter Donahue, as will more fully appear by Exhibit B, attached to the bill of complaint.

That on the 11th day of August, 1884, all of the heirs of said Edward Martin, and all persons who held an interest by purchase in said lands, to wit: P. J. Martin, Eleanor Martin, D. V. B. Henarie, Peter Donahue, Edward Martin, James V. Martin, Thomas S. Martin, Genevieve E. Walker, and Joseph W. Winans, sold, and by deed conveyed all their interest in the said lands and land grant, to the Eastern Oregon Land Company, a corporation duly organized and incorporated under the laws of the State of California, having its office in the city of San Francisco, in the State of California, as will more fully appear by Exhibit E, attached to the bill of complaint.

That the Eastern Oregon Land Company now holds the legal title to all the said lands granted to the Dalles Military Road Company, except such as have heretofore

been sold and conveyed by the Dalles Military Road Company and its grantees and the said Eastern Oregon Land Company.

All which matters and things these defendants do aver to be true, and they plead the said matters in bar to the plaintiff's bill of complaint, and pray the judgment of this Honorable Court whether they ought to be required to make any other or further answer to said bill, and pray to be hence dismissed with their costs and charges in that behalf wrongfully sustained.

JAMES K. KELLY,
Solicitor for Defts.

UNITED STATES OF AMERICA, *District of Oregon:*

I, James K. Kelly, of counsel for the above-named defendants, do hereby certify that in my opinion the foregoing plea of said defendants is well founded in point of law.

JAMES K. KELLY,
Solicitor for Defts.

STATE OF CALIFORNIA,
County of San Francisco, ss:

We, D. V. B. Henarie, Eleanor Martin, P. J. Martin, and D. V. B. Henarie, president Eastern Oregon Land Company, being duly sworn according to law, do say that we are defendants in the above-entitled suit, that the foregoing plea is not interposed for delay, and that it is true in point of fact.

D. V. B. HENARIE,
ELEANOR MARTIN,
P. J. MARTIN,
D. V. B. HENARIE,
Pres't Eastern Oregon Land Company.

Sworn to before me this 12th day of October, 1889.

[SEAL.] J. D. MONCTON,
Deputy Clerk and Commissioner
U. S. Circuit Court, Northern District California.

(Endorsed.) Filed Oct. 17, 1889. R. H. LAMSON, *Clerk*

First Plea.

The first plea of the defendants is what is called a *negative* plea. It is merely a denial of the statements in the bills that the certificates of the Governors were procured through the false and fraudulent representations of the parties interested in procuring the grant.

1 Daniel, Ch. Pr., 604, ed. 1879.

We maintain that, when the Governors of Oregon made their certificates declaring that the military roads were constructed according to the acts of Congress, the Dalles Military Road Company and the Oregon Central Military Road Company then had a perfect title to the lands granted to them respectively, and had full authority to sell and convey the same, and that their vendees took an indefeasible title to the lands purchased by them, based upon the certificates of the Governors, which certificates became one of their muniments of title.

This, therefore, under the first plea, raises the question which the Court is required to decide—"*What is the legal effect of the several certificates of the Governors of the State of Oregon of the completion of said roads?*"

In both cases the legal title to the lands in controversy became vested in the State of Oregon by the words, "*That there be and hereby is granted to the State of Oregon, etc.*" It was a title *in presenti*.

This has been settled law by the decisions of the Supreme Court in many cases.

Schulenberg v. *Harriman, 21 Wall., 44.*
Leavenworth Ry. Co. v. *United States, 92 U. S., 733.*
Mo. and C. Ry. Co. v. *Kan. Pac. Ry. Co., 97 U. S., 491.*
Wright v. *Roseberg, 121 U. S., 500.*

The State of Oregon transferred to the respective wagon road companies all the lands, rights, privileges, and immunities granted to it by the acts of Congress, and this

transfer was recognized as valid by the act of Congress approved June 18, 1874. (18 U. S. Stats., 80.)

The condition upon which the grants were made was that the grantees should construct the military wagon roads, and when this was done the grants became perfect and indefeasible, and *when* they were completed was a fact to be determined by the Governor of Oregon and him only, and this fact was to be ascertained and evidenced by his certificate to the Secretary of the Interior. He was not required to examine and certify that any and every section of ten continuous miles of road made by the companies was completed. He might, and doubtless would have done so, if he had been requested by the corporations. Nor did the acts of Congress require the wagon-road companies to apply to the Governor to issue his certificate when any section of ten continuous miles was completed, nor were they required to sell the lands even if the Governor had issued his certificates of completion. It was optional with them to sell or not. "Then a quantity of land hereby granted not exceeding thirty sections *may* be sold" are the words of the act.

What was the Effect of the Governor's Certificate?

As we stated before, the only one authorized by the acts of Congress to decide when the roads were completed was the Governor of Oregon, and his certificate of completion was the only evidence of that fact and the only authority for the corporations to sell the lands. From the decisions of the Governor on this fact of completion there was no appeal, and necessarily his decisions were final and conclusive. The United States having clothed the Governor with authority to decide and certify to the fact of construction and completion of the roads, and authorized the land to be sold upon such certificates, cannot go behind his acts so far as to destroy or take away the vested rights of innocent purchasers. On the

contrary, the Government is estopped by the acts of its constituted agent.

In *United States* v. *Arredondo*, 6 Peters, 729, the Supreme Court says:

"It is a universal principle that, where power or jurisdiction is delegated to any public officer, or tribunal, over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter, and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done, and the public, or any person denying its validity, are, power in the officer, and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal, or officer, whether executive, legislative, judicial, or special."

The same principle was enunciated in Reichart *v.* Felps, 6 Wallace, 160. In that case the Governor of the Northwest Territory was authorized by an act of Congress to examine the claims of the ancient settlers who were in possession of lands at the beginning of the revolution, and confirm them in the possession. Under this authority, Governor St. Clair issued a document, somewhat in the form of a land patent to one Jarrot, confirming to him in fee a tract described.

Afterwards, on February 12, 1812, Congress passed an act authorizing a Board of Commissioners to revise and re-examine the confirmations made by the Governor. Upon their report the Jarrot claim was rejected by the proper officers of the Government, and the land previously confirmed to Jarrot was sold at public sale to Reichart, and a patent issued to him. The Supreme Court declared this patent void, and confirmed the Jarrot title. It held that Congress had no power to organize a Board of Revision to nullify titles confirmed

many years before by the authorized agent of the Government.

In United States v. *Speed. 8 Wall., 83*, the principle here involved came before the Supreme Court in a case where a Government officer had decided, under the *implied* authority given by the act of March 2, 1861 (12 U. S. Stats., 220), that an exigency existed which dispensed with advertising for Government supplies.

In holding that the decision of the officer was *final* and *conclusive*, no matter how erroneous, the Court says (p. 83):

"It is too well settled, to admit of dispute at this day, that where there is a discretion conferred on an officer, or board of officers, and a contract is made in which they have exercised that discretion, the validity of the contract cannot be made to depend on the degree of wisdom or skill which may have accompanied its exercise."

We think it unnecessary to multiply authority in support of this principle, for the act of Congress of June 18, 1874, recognizes the validity of the Governors' acts in issuing these certificates.

It, in effect, declares them to be final and conclusive as to the completion of the several wagon roads, and directs that patents for the lands *shall* be issued by the Land Department to the corporations to which they were transferred. This was equivalent to a confirmation of title to the several corporations:

"The right to a patent once vested is equivalent, as respects the Government dealing with the public lands, to a patent issued."

Stark v. *Starrs, 6 Wall., 402.*

We therefore claim that "the legal effect of the several certificates of the Governors of the State of Oregon of the completion of said road," which the Court is required to decide, is, coupled with the act of June 18, 1874, a con-

firmation of the grants to these corporations, and that they have now an indefeasible title to the same.

Second Plea.

The second plea of the Eastern Oregon Land Company and the California and Oregon Land Company, is substantially that each one of them is a *bona-fide* purchaser for a valuable consideration of the lands claimed by them respectively.

This is a plea frequently resorted to in equity pleading by a defendant, who has purchased land in good faith for a valuable consideration, without notice of any adverse claim of title.

"If a bill is brought," says Mr. Daniel in his Chancery Practice, "to recover the possession of an estate, a defendant may protect himself by a plea stating that he was the purchaser of the estate, and that he paid a valuable consideration for it, and that he had not at the time of the purchase any notice of the title or claim of the plaintiff to the property. This is called a plea of purchase for a valuable consideration without notice, and is, if true, a bar to the suit."

1 Daniel Ch. Pr., 611, 674, (Ed. of 1879.)
Story's Equity Pl., Sec. 805 to 812.

It was held by the Supreme Court, in Colorado Coal Co. *vs.* The United States, 123 U. S. 307, that—

"To a bill in equity to cancel a patent of land from the United States to a pre-emptioner, solely on the ground that there was no actual settlement and improvement on the land, as falsely set out in affidavits in support of this pre-emption claim, the defense of a *bona-fide* purchaser is perfect."

It is indeed needless to refer to any authority beside the act of Congress itself, under which this suit is brought. That act expressly reserves from forfeiture

"*The rights of all bona-fide purchasers for a valuable consideration, if any there be.*"

The grounds upon which the Government claims a forfeiture of the lands owned by the Eastern Oregon Land Company, and the California and Oregon Land Company, are set forth in the bills as follows:

"That each and every of the said defendants * * * at the time of the execution and delivery of the deeds aforesaid, had full knowledge that the road provided for by the said act of Congress first aforesaid had not at any time been constructed as required by the said act of Congress and by the laws of the State of Oregon."

Dalles Co. Rec., p. 9, par. 10.
Oregon Central Rec., p. 11, par. 21.

It is not alleged in either of the bills that the consideration specified in the several deeds was not fully paid by the vendees therein named. It is not averred in the bills that these purchasers did not pay a valuable consideration for the land which they bought. The only ground of forfeiture insisted on by the district attorney in the Court below was that these purchases were not made in good faith, because the purchasers should, before buying, have examined the roads, and ascertained that they were constructed and completed as required by the laws of Congress. This view of the law the Circuit Court declared was *preposterous.*

On the contrary we contend that when Edward Martin purchased the lands granted to the Dalles Company, on May 31st, 1876, he was not bound to examine the road, but could safely rely upon the certificate of the Governor and the act of Congress of June 18, 1874. He certainly had a right to believe that the Government would carry out that act in good faith, and that he could safely buy the land under it.

The Bills should be Dismissed.

The bills in these cases should be dismissed, for the suits cannot be maintained because the act of June 18, 1874, stands in the way. This act determined the fact of the performance of all the conditions upon which the grants were made. It was an acknowledgment by the grantor that the grantee had done all that was required to be done to make the conditional grants absolute and vest a perfect title in the corporations claiming the land. This act in effect confirmed the certificates of the Governors of Oregon, if, indeed, they needed any confirmation. But it did more. It conferred new rights—a new source of title—upon the grantees and their assigns which they had not under the certificates of the Governors. It directed that patents should be issued *in all cases* to the wagon-road corporations for the land claimed by them where they had already received the certificate of the Governor. And it has been decided in *Stark* v. *Starrs*, *6 Wall., 402*, that—

"The right of a patent once vested is equivalent, as respects the Government dealing with the public lands, to a patent issued."

These patents will continue to be valid, and convey the title to the lands in controversy to the wagon-road corporations, unless this Court shall annul the act of June 18, 1874, or arrest the force of its provisions. But this the Court will not do. We have been unable to find a case where a confirmation by act of Congress has been annulled by the Courts because it was alleged in a bill in equity that Congress was mistaken, or induced through fraudulent or improper motives to pass it. On the contrary, the Supreme Court has declared that it will not investigate or inquire into a title confirmed by act of Congress, even though the confirmation was made under a misapprehension of law or fact.

It was so held in Tameling *v.* U. S. Freehold, 93 U. S., 644. In that case a concession or grant had been made by the Mexican Government to two citizens of New Mexico before that territory was ceded to the United States. Congress, in providing for the settlement of Mexican land-claims, made it the duty of the Surveyor-General to ascertain their origin, character, and extent. He was directed to make a report to Congress, with his decision as to the validity or invalidity of each claim under the laws, usages and customs of the country before its cession to the United States. That report was to be laid before Congress for such action as might be deemed proper. The Surveyor-General, in the exercise of the authority vested in him, was required to decide in the first instance whether the claims were valid or not. Final action in each claim was reserved for Congress, whether to confirm or reject the report of the Surveyor-General.

In the case of the grant to the two citizens of New Mexico, before referred to, there had been a concession of a large tract of land designated as "Sangre de Cristo Grant." It was surveyed and its exterior boundaries marked out. Proofs of the grant were submitted to the Surveyor-General, and a report made by him to the Secretary of the Interior, who submitted the same to Congress with a recommendation that the grant be confirmed. On June 21, 1860, Congress passed "An act to confirm certain private land-claims in the Territory of New Mexico," and among them was the grant *Sangre de Cristo*, "as recommended for confirmation by the Surveyor-General."

Under the Mexican colonization laws in force when this grant was made, not more than 11 square leagues for each petitioner could be lawfully granted. In that case there were but two petitioners, and not more than

22 square leagues could be lawfully granted to them, and as the grant in question largely exceeded that quantity, it was claimed to be invalid. Although the Surveyor General doubtless erred in recommending the confirmation of the grant, because the boundaries included a much greater quantity of land than the laws of Mexico allowed, yet the Supreme Court refused to inquire into or consider the question whether it was valid or invalid on that account. The Court held that Congress having acted upon the matter, had finally disposed of it by a confirmation of the grant. Delivering the opinion of the Supreme Court, Mr Justice Davis said:

"As there were in the present instance but two petitioners, and the land within the boundaries in question is largely in excess of that quantity (22 leagues), the invalidity of the grant has been earnestly and elaborately pressed upon our attention. This was matter for the consideration of Congress; and we deem ourselves concluded by the action of that body. The phraseology of the confirmatory act is, in our opinion, explicit and unequivocal. In *Ryan et. al.* v. *Carter et. al., supra, page 78*, we recognized and enforced as the settled doctrine of this Court that such an act passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and that a grant may be made by a law as well as by a patent pursuant to law."

In accordance with the principle declared in that case, the act of June 18, 1874, confirmed the certificates issued by the Governors of Oregon, if indeed they needed any confirmation, to vest a perfect title in the wagon-road corporations. That act directed patents to be issued to these corporations, and the right to a patent once vested is equivalent to a patent issued.

Stark v. Starrs, 6 Wall., 402, supra.

There is an additional reason why the bill should be dismissed in the case of the Oregon Central Military

Road Company, and its assignee the California and Oregon Land Company. It is not alleged or claimed in the bill that the Governors acted fradulently in certifying the completion of the road. The allegation is merely that the evidence upon which their findings were made was false. The Court will not go again into the inquiry upon which these certificates were issued merely because it is claimed that some witnesses testified falsely.

U. S. v. *Throckmorton, 98 U. S., 61.*

Vance v. *Burbank, 101 U. S., 514.*

Flagg v Bonnett. 10 Wall. 542-54

The Claims, to Declare the Forfeiture of the Land, are Stale and Inequitable.

Suits to declare the grants forfeited could have been brought under existing laws by the Attorney General in behalf of the United States at any time after the five years had expired in which the roads were to be completed—that is, it could have been brought at any time after February 25, 1872, against the Dalles Military Road Company.

See U. S. v. *Jacinto Tin Co., 125*

U. S. v. *Beebe, 127 U. S., 338.*

Sullivan v Portland 94 U

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Eastern Oregon Land Company filed in support of its pleas (and to which no replication was filed) that the United States continued to receive large profits from the road in the facilities for the transportation of mails, military supplies, and goods for its Indian reservations, all of which passed over the Dalles Military road free of tolls and other charges, as will more fully appear by the following part of said answer. (*See Record Dalles Co., 64.*)

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Road Company, and its assignee the California and Oregon Land Company. It is not alleged or claimed in the bill that the Governors acted fradulently in certifying the completion of the road. The allegation is merely that the evidence upon which their findings were made was false. The Court will not go again into the inquiry upon which these certificates were issued merely because it is claimed that some witnesses testified falsely.

U. S. v. *Throckmorton, 98 U. S., 61.*

Vance v. *Burbank, 101 U. S., 514.*

Flagg v Bonnell. 10 Wall. 542. 82-84

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Suits to declare the grants forfeited could have been brought under existing laws by the Attorney General in behalf of the United States at any time after the five years had expired in which the roads were to be completed—that is, it could have been brought at any time after February 25, 1872, against the Dalles Military Road Company.

See U. S. v. *Jacinto Tin Co., 125 U. S., 273.*

U. S. v. *Beebe, 127 U. S., 338.*

Sullivan v Portland 94 US 806. 811

At that time no dissatisfaction whatever was expressed with the manner in which the road was constructed nor with the action of the Governor of Oregon in certifying to its completion.

On the contrary it appears from the answer of the Eastern Oregon Land Company filed in support of its pleas (and to which no replication was filed) that the United States continued to receive large profits from the road in the facilities for the transportation of mails, military supplies, and goods for its Indian reservations, all of which passed over the Dalles Military road free of tolls and other charges, as will more fully appear by the following part of said answer. (*See Record Dalles Co., 64.*)

"That all the supplies used by the U. S. troops stationed at Camp Watson, Camp Harney, and Camp Logan, in Grant County (except such as were procured in the vicinity of said military posts), were hauled or packed over a great portion of said military road; that the United States mails were carried on said road from Cross Hollows to Canyon City in passenger coaches drawn by four horses, and made regular trips, sometimes twice and sometimes three times a week, and returned in the same way.

"And these defendants further say that from and after the time when the Dalles Military Road Company became entitled to the said grant of land by virtue of the act of the Legislative Assembly approved October 20, 1868, the said road has remained a public highway for the use of the Government of the United States, free from tolls or other charges upon the transportation of any and all property, troops, or mails of the United States, and that no tolls were ever collected by the Dalles Military Road Company from the United States since the said 20th day of October, 1868."

The United States not only refrained from bringing suits to declare these lands forfeited, within a reasonable time after the certificates were issued by the Governors of Oregon, but this failure to bring suit was followed by the act of June 18, 1874, confirming in effect those certificates and directing patents to be issued to the wagon road corporations.

We submit that it would be inequitable to declare the lands forfeited in the hands of subsequent purchasers, whether for a valuable consideration or not.

JAMES K. KELLY,
Solicitor for Eastern Oregon Land Co.

DOLPH, BELLINGER, MALLORY & SIMON,
Solicitors for the California and Oregon Land Co.

Rufus Mallory

APPENDIX "A."

"AN ACT donating Certain Lands to Dalles Military Road Company.

" *Whereas*, at the second session of the Thirty-ninth Congress that body passed an act entitled 'An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City on the Columbia river to Fort Boise on the Snake river.'

"Approved February 25, 1867, as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:*

"SECTION 1. That there be, and hereby is, granted to the State of Oregon, to aid in the construction of a military wagon road from Dalles City, on the Columbia river, by way of Camp Watson, Canyon City, and Mormon or Humboldt Basin, to a point on Snake river opposite Fort Boise, in Idaho Territory, alternate sections of public lands designated by odd numbers to the extent of three sections in width on each side of said road.

"*Provided*, That the lands hereby granted shall be exclusively applied to the construction of said road and to no other purpose, and shall be disposed of only as the work progresses; and

"*Provided further*, That any and all lands heretofore reserved to the United States or otherwise appropriated by act of Congress or other competent authority be, and the same are hereby, reserved from the operation of this act, except so far as it may be necessary to locate the route of said road through the same, in which case the right of way to the width of one hundred feet is granted; and

"*Provided further*, That the grant hereby made shall not embrace any mineral land of the United States.

"SEC. 2. *And be it further enacted*, That the lands hereby granted to the said State shall be disposed of by the Legislature thereof for the purpose aforesaid, and for no other; and the said road shall remain a public highway for the use of the Government of the United States, free from tolls or other charges, upon the transportation of any property, troops, or mails of the United States.

"SEC. 3. *And be it further enacted*, That the said road shall be constructed with such width, gradation and bridges as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon may prescribe.

"SEC. 4. *And be it further enacted*, That the State of Oregon is authorized to locate and use in the construction of said road an additional amount of public lands, not previously reserved to the United States, not otherwise disposed of, and not exceeding ten miles in distance from it, equal to the amount reserved from the operation of this act, in the first section of the same, to be selected in alternate sections, as provided in section first of this act.

"SEC. 5. *And be it further enacted*, That lands hereby granted to said State shall be disposed of only in the following manner, that is to say: When the Governor of said State shall certify to the Secretary of the Interior that ten continuous miles of said road are completed, then a quantity of the land hereby granted, not to exceed thirty sections, may be sold; and so on, from time to time, until said road shall be completed; and if said road is not completed within five years, no further sales shall be made, and the lands remaining unsold shall revert to the United States.

"SEC. 6. *And be it further enacted*, That the United States Surveyor-General for the District of Oregon shall cause said lands so granted to be surveyed at the earliest practicable period after said State shall have enacted the necessary legislation to carry this act into effect. Therefore,

"*Be it enacted by the Legislative Assembly of the State of Oregon:*

"SECTION 1. That there is hereby granted to Dalles Military Road Company, incorporated, as it appears by the articles of incorporation filed in the office of the Secretary of State on the 30th day of March, 1868, all lands, right of way, rights, privileges and immunities heretofore granted or pledged to this State by the act of Congress, in this act heretofore recited, for the purpose of aiding said Company in constructing the road mentioned

and described in said act of Congress, upon the conditions and limitations therein prescribed.

"SEC. 2. There is hereby granted and pledged to said Dalles Military Road Company all moneys, lands, rights, privileges and immunities, which may be hereafter granted to this State, to aid in the construction of such road, for the purposes and upon the conditions mentioned in said act of Congress, or which may be mentioned in any further grants of money or lands to aid in constructing said road.

"SEC. 3. The said Dalles Military Road Company is hereby authorized to locate the lands mentioned in the fourth section of the above-recited act, subject to the approval of the Governor.

"Approved October 20, 1868."

Session Laws of Oregon, 1868, page 3.

APPENDIX "B."

"AN ACT granting lands to the State of Oregon to aid in the construction of a military road from Eugene City to the eastern boundary of said State.

"*Be it enacted, etc.*, That there be, and hereby is, granted to the State of Oregon, to aid in the construction of a military wagon road from Eugene City, by way of Middle Fork of Willamette river, and the most feasible pass in Cascade range of Mountains, near Diamond Peak, to the eastern boundary of the State, alternate sections of public lands, designated by odd numbers, for three sections in width on each side of said road: *Provided*, That the lands hereby granted shall be exclusively applied in the construction of said road, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That any and all lands heretofore reserved to the United States, by act of Congress, or other competent authority, be, and the same are, reserved from the operation of this act, except so far as it may be necessary to locate the route of said road through the same, in which case the right of way is granted.

"SEC. 2. *And be it further enacted*, That the said lands hereby granted to said State shall be disposed of by the Legislature thereof for the purpose aforesaid, and for no other; and the said road shall be and remain a public highway for the use of the Government of the United States, free from tolls or other charge upon the transportation of any property, troops, or mails of the United States.

"SEC. 3. *And be it further enacted*, That said road shall be constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road, and in such other special manner as the State of Oregon may prescribe.

"SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of only in the the following manner, that is to say: that a quantity of land not exceeding thirty sections for said road may be sold; and when the Governor of said State shall certify to the Secretary of the Interior that any ten continuous miles of said road are completed, then another quantity

of land hereby granted, not to exceed thirty sections, may be sold, and so from time to time until said road is completed; and if said road is not completed within five years, no further sales shall be made, and the land remaining unsold shall revert to the United States."

ACT OF CONGRESS OF JULY 2, 1864, 13 STATS., U. S., 355.

"*Be it enacted by the Legislative Assembly of the State of Oregon:*

"SECTION 1. That there is hereby granted to the Oregon Central Military Road Company all lands, right of way, rights, privileges, and immunities heretofore granted or pledged to this State by the act of Congress in this act heretofore recited, for the purpose of aiding said company in constructing the road mentioned and described in said act of Congress upon the conditions and limitations therein prescribed.

"SEC. 2. There is also hereby granted and pledged to said company all moneys, lands, rights, privileges and immunities which may be hereafter granted to this State, to aid in the construction of said road, for the purposes and upon the conditions and limitations herein mentioned or which may be mentioned in any further grant of money or lands to aid in the constructing such road.

"SEC. 3. Inasmuch as there is no law upon this subject at the present time, this act shall take effect from and after its passage.

"Approved October 24th, 1864."

Session Laws of Oregon, 1864, page 37.

140-634
140-634

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 369.

R. W. MARTIN, APPELLANT,

vs.

ORMOND BARBOUR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JUNE 1, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print.
Caption	1	1
Motion for certiorari	1	1
Order granting certiorari	3	1
Transcript from State court	5	2
Petition	5	2
Deed for forfeited lands sold, No. 8865	8	4
No. 8866	10	4
No. 8867	12	6
Affidavit of publication	14	6
Notice of confirmation	15	7
Letter of Munger *et al.* to commissioner of State lands, August 31, 1887	18	9
Letter of commissioner of State lands, September 3, 1887	20	9
Deed from commissioner to Martin, June 16, 1887	20	9
Answer and cross-bill	23	11
Petition for removal	46	17
Bond for removal	48	18
Order filing petition and bond for removal	52	18
Clerk's certificate to transcript	54	19
Clerk's certificate as to costs	55	19
Replication	56	19
Order to open certain depositions	57	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 25, 1891.

	Original.	Print.
Exhibit to cross-bill—Marriage license and certificate of Ormund Barbour and Mrs. F. M. Munger	57	20
Order filing amendments to bill and answer	60	21
Amendment to answer and cross-bill	60	21
Amendment to bill	63	22
Order filing answer to cross-bill	63	23
Answer to cross-bill	63	23
Order filing complainant's exhibits	68	24
Exhibit No. 1—Certified copy of appointment of Charles B. Meyers as deputy commissioner of State lands, &c., February 16, 1888	68	25
No. 2—Certified copy of appointment of Charles B. Meyers as deputy commissioner of State lands, &c., December 29, 1885	70	25
Order filing defendant's exhibits	73	27
Exhibit No. 3—Deposition of Paul M. Cobbs	73	27
No. 4—Certificate of Secretary of State as to P. M. Cobbs, State land commissioner	76	28
No. 5—Statement as to value by John M. Harrell	77	28
Order filing amendment to cross-bill	79	29
Amendment to cross-bill	79	29
Exhibit No. 6—Proof of publication of sale of delinquent lands for the year 1884	80	29
No. 7—Reissued deeds of commissioner to Martin, February 20, 1888	83	30
No. 8—Transcript of proceedings of the board of equalization of Garland county	90	33
Final decree	96	36
Allowance of appeal	97	36
Order on redemption money being paid into registry of court	97	36
Deposition of Frances M. Barbour	98	36
Exhibit A—Marriage certificate of Franklin J. Munger and Frances M. Parks	105	39
Deposition of Edward L. Reid	106	40
John D. Ware	110	41
W. H. Moyston	114	43
Robert Parks	123	46
James E. Chandler	127a	47
Charles H. Hinman	132	49
Edward L. Reid	135	50
Petition to Garland county court	142	52
Diagram	154	57
Notice of application	155	57
Order on petition	159	58
Deposition of Michael McKeogh	164	60
Exhibit A—Statement of incorporation of Hot Springs	166	60
Exhibit A to deposition of E. L. Reid—List of real estate assessed for taxation, 1883	171	61
Exhibit No. 9—Map	172	61
No. 10—Transcript of proceedings of board of equalization of Garland county, Arkansas	173	62
No. 11—Affidavit of Ellis Woolman as to publication	195	68

	Original.	Print.
Exhibit No. 12—Certificate of assessor of Garland county as to appraisement, &c.	197	70
No. 13—Proceedings of board of equalization of Garland county	200	72
Deposition of Ellis Woolman	221	82
Opinion of the court	223	82
Clerk's certificate	228	96
Stipulation as to abstract of title	229	96
Abstract of title	229	97
Stipulation for addition to record	231	98

1 Be it remembered that on the eighth day of November, A. D. 1887, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas, western division, Ormand Barbour, by John M. Harrell, Esq., his solicitor, and filed ther-in his motion for a certiorari, which is in the words and figures following, to wit:

In United States Circuit Court, Eastern District of Arkansas.

R. W. MARTIN, *ex Parte.*

Ormand Barbour, responding to the petition of R. W. Martin, filed in the circuit court of Garland county, for a decree to confirm sale of lot 5, block 140, for taxes of 1884, states that the value of said lot is six thousand dollars; that at the first term after the filing of said petition, to wit, the September term, 1887, of said Garland circuit court, he filed his answer and cross-bill in said cause and on the 6th day of October, 1887, filed a petition and bond with sufficient surety, as provided by the act of Congress for removal of causes, and obtained the order of said Garland circuit court Oct. 6th, 1887,
2 for the removal of said cause to this court, and requested the clerk of said State court to make out copy of the record in said cause and tendered the costs of said copy; which said tender was waived then and there by said clerk and assurance given that said copy should be made forthwith.

That, owing to the fact that some attorney or other person took the original papers out of the office of said clerk, and he has been unable to procure them, he says, for making such copy, no copy or transcript of said cause has been made or forwarded to this court, as said Ormand Barbour obligated himself in his said bond should be made.

Wherefore he prays a writ of certiorari to said clerk of said State court, requiring him to certify a copy of the said record in said cause without delay; and other appropriate orders.

ORMAND BARBOUR,
By his solicitor, J. M. HARRELL.

Endorsed: Filed Nov. 8, 1887. Ralph L. Goodrich, clerk.

On which motion the following order was entered:

3 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the twenty-fourth day of October, anno Domini

one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on November 8th, 1887:

R. W. MARTIN, *ex Parte.*
ORMAND BARBOUR, Respondent. } 904.

Upon the application of Ormand Barbour, respondent in said cause, for a writ of certiorari to the clerk of the circuit court of Garland county, State of Arkansas, commanding said clerk to certify a copy of the record in said cause on the equity side of said court, entitled R. W. Martin, *ex parte*—

It appearing from said application that removal of said cause to this court was ordered by said State court and a copy of the same requested and fees therefor tendered to said clerk eighteen days before the first day of the present term of this court, and that no such copy has been forwarded—

It is ordered that a writ of certiorari be issued to said clerk commanding him, upon payment of the fees therefor, to certify a
4 copy of the record in said cause to the clerk of this court without delay, or show cause for not doing so, and that said clerk of said State court be served with a copy of this order.

On December 8th, 1887, the transcript in the said cause from the Garland county circuit court was filed, which is as follows:

5 *In Re* Petition of R. W. MARTIN to Confirm Tax Title; ORMOND BARBOUR, Respondent.

In the Garland Circuit Court.

R. W. MARTIN, *ex Parte.* Petition for Confirmation of Tax Title.

Your petitioner states that the following-described lands was delinquent for the non-payment of the taxes of 1884:

Part of section.	Section.	Township.	Range.	Purchase price.
S. W. ¼ of S. E. ¼	9	3	19 west.	$50 00

That the following-described town lots in the city of Hot Springs, in said county, were also delinquent for the non-payment of the taxes of that year:

	Lot.	Block.	Purchase price.	Lot.	Block.	Purchase price.
	1	28	$3 50			
	6	33	5 20			
	4	41	6 45			
6	2	44	6 45	5	140	110 95
	5	47	6 45	14	142	11 95
	6	47	30 10	9	144	5 90
	10	49	5 35	1	145	5 35
	11	49	5 35	2	158	3 15
	9	50	7 55	3	158	3 15
	13	53	28 45	6	160	6 05
	3	67	7 55	5	169	2 39
	7	72	4 25	8	183	5 20
	8	72	4 25	283	192	8 70
	6	74	3 15			
	5	75	7 55			
	9	128	23 39			
	13	136	7 55			

That said land and town lots were duly offered for sale by the collector of said county and were stricken off to the State of Arkansas; that, the time for the redemption of said land and town lots having expired, they were by the county clerk of Garland county duly certified to the commissioner of said land, as required by law; that thereupon your petitioner applied to the said commis-
7 sioner to purchase the said land and town lots, and, upon the payment to said commissioner of the prices stated opposite to each tract of land and town lot, received from the said commissioner of State lands, on the 16th day of June, 1887, three deeds, which are herewith exhibited as Exhibits 1, 2, and 3.

The first of said deeds conveys said tract of land, the first 17 of said town lots, and the third the remaining 13 thereof, and petitioner prayed for each of said deeds the sum of $1.00; and your petitioner is now the owner of said lots and tracts of land by virtue of said conveyances; that your petitioner has given the notice required by law, and is now entitled to a decree confirming his title. He therefore prays his title to said land and town lots be confirmed.

U. M. & G. B. ROSE.

"Endorsed:" R. W. Martin, *ex parte*. Petition for confirmation of tax title. Filed Jul- 22, 1887. W. H. Moyston, cl'k. U. M. & G. B. Rose.

8 *Deed for Forfeited Lands Sold.*

No. 8865.

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye that the following-described land, situate in the county of Garland, in the State of Arkansas, was forfeited to the State for the non-payment of the taxes for the years 1884, as follows, to wit:

Parts of section.	Sec.	Township.	Range.	Acres.	Year forfeited.
S. W. ¼ of S. E. ¼---	9	3 S.	19 W.	40	1884

That the same now appears on the books of this office as vacant and subject to sale; and R. W. Martin having applied to purchase the same and having paid into the State treasury the sum of fifty dollars and no cents, the amount required to purchase said land under an act to amend sections 4194, 4197, and 4244 of Mansfield's Digest of the Statu-es of Arkansas, and for other purposes, approved April 1st, 1887, therefore know ye that I, P. M. Cobbs, com-
9 missioner of State lands for the State of Arkansas, for and in consideration of the premises and by virtue of an act to authorize the commissioner of State lands to make deeds in certain cases, approved December 13, 1875, do by these presents grant and convey to the said above-named applicant and to his heirs and assigns forever all the right, title, interest, and claim of the State of Arkansas thereto:

To have and to hold the same as now held or owned by the State unto the said grantee and to his heirs and assigns forever.

In testimony whereof I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, have hereunto set my hand and affixed my official seal, at Little Rock, Ark., this 16th day of June, 1887.

PAUL M. COBBS,
Commissioner of State Lands.

[L. S.]

C. B. MYERS,
Dep'ty Com'r.

10 *Deed for Forfeited Lands Sold.*

No. 8866.

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye that the following-described lands, situate in the county

of Garland, in the State of Arkansas, was forfeited to the State for the non-payment of the taxes for the years 1884, as follows, to wit:

			Year forfeited.
Lot 1, block 28			
" 6, 33			
" 4, 41			
" 2, 44			
5 & 6, 47			
10 & 11, 49			
Lot 9, 50	All in town of Hot Springs		1884.
" 13, 53			
" 3, 67			
7 & 8, 72			
" 6, 74			
" 5, 75			
" 9, 128			
" 13, 136			

That the same now appears on the books of this office as vacant and subject to sale; and R. W. Martin having applied to purchase the same and having paid into the State treasury the sum of one hundred and sixty-two dollars and fifty-six cents, the amount required to purchase said land under an act amendatory of ex-
11 isting laws regulating the sale of the lands of the State, approved December 13th, 1875, and March 10th, 1879:

Therefore know ye that I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, for and in consideration of the premises and by virtue of an act to authorize the commissioner of State lands to make deeds in certain cases, approved December 13th, 1875, do by these presents grant and convey to the said above-named applicant and to his heirs and assigns forever all right, title, interest, and claim of the State of Arkansas thereto; to have and to hold the same as now held or owned by the State unto the said grantee and to his heirs and assigns forever.

In testimony whereof I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, have hereunto set my hand and affixed my official seal, at Little Rock, Arkansas, this 16th day of June, A. D. 1887.

PAUL M. COBBS,
Commissioner of State Lands.
C. B. MYERS,
Deputy Commissioner.

12 Endorsed: 581. R. W. Martin, *ex parte.* Exhibits to petition. U. M. and G. B. Rose. Filed August 1st, 1887. W. H. Moyston, clerk.

Deed for Forfeited Lands Sold.

No. 8867.

THE STATE OF ARKANSAS:

Know ye that the following-described land, situate in the county of Garland, in the State of Arkansas, was forfeited to the State for non-payment of the taxes for the years 1884, as follows, to wit:

Lot	9 & 20,	block 137		
"	5 & 6,	140		
"	14,	142		
"	9,	144		
"	1,	145	All in town of Hot Springs----	1884.
"	2 & 3,	158		
"	6,	160		
"	5,	169		
"	8,	183		
"	2 & 3,	192		

That the same now appears on the books of this office as vacant and subject to sale; and R. W. Martin having applied to purchase the same and having paid into the State treasury the sum of two hundred and sixty-five dollars and sixty-four cents, the amount required to purchase said land under an act amendatory of existing laws regulating the sale of the lands of the State, approved December 13th, 1875, and March 10th, 1879, therefore know
13 ye that I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, for and in consideration of the premises and by virtue of an act to authorize the commissioner of State lands to make deeds in certain cases, approved December 13th, 1875, do by these presents grant and convey to the said above-named applicant and to his heirs and assigns forever all the right, title, interest, and claim of the State of Arkansas thereto; to have and to hold the same as now held or owned by the State unto the said grantee and to his heirs and assigns forever.

In testimony whereof I, P. M. Cobbs, commissioner of State lands, have hereunto set my hand and affixed my official seal, at Little Rock, Arkansas, this 16th day of June, A. D. 1887.

PAUL M. COBBS,
Commissioner of State Lands,
By C. B. MYERS,
Deputy Commissioner.

[L. S.]

14 STATE OF ARKANSAS, }
County of Garland, } ss:

I, Ellis Woolman, do solemnly swear that I am publisher of the Weekly Sentinel, a weekly newspaper printed and published in

Garland county, State of Arkansas; that I was such publisher at and during the publication of the annexed legal advertisement in the case of —, pending in court, and at the dates of the several publication of said advertisement hereinafter stated, and that during said periods and at said dates said newspaper was printed and had a *bona fide* circulation in said county; that said newspaper had been regularly printed and published in said county and had a *bona fide* circulation therein for the period of one month next before the date of the first publication of said advertisement, and that said advertisement was published in the regular weekly issues of said newspaper once a week for six consecutive weeks. The first publication thereof had been made on the 30th day of July, 1887; the second on the 6th day of Aug., 1887; the third on the 13th day of Aug., 1887, and the fourth on the 20th day of Aug., 1887, and the fifth on the 27th day of Aug., 1887, and the sixth on the 3rd day of Sept., 1887.

ELLIS WOOLMAN.

(Endorsed:) 581. *Ex parte* petition R. W. Martin. Filed Sep. 12, 1887. W. H. Moyston, clerk. Notice of publication.

Fees for printing ------	$10 00
Cost of proof ---------	25
	$10 25

Sworn and subscribed to before me this 9th day of Sept., 1887.

[SEAL.] B. D. RAPLEY,
Notary Public.

Notice.

Confirmation of tax title.

Notice is hereby given that whereas the following lands in Garland county, Arkansas, were delinquent for non-payment of the taxes of the year 1884:

Part of sec.	Sec.	Towns'p.	Range.	Purchase price.
S. W. qr. of S. E. qr.--	9	3 south.	19 west.	$50 00

And whereas the following town lots, in the city of Hot Springs, in said county, were also delinquent for the non-payment of the taxes of said year:

Lot.	Block.	Purchase price.	Lot.	Block.	Purchase price.
1	28	$3 50	3	67	$7 55
6	33	5 20	7	72	4 25
4	41	6 45	8	72	4 25
2	44	6 45	6	74	3 15
5	47	6 45	5	75	7 55
6	47	30 10	9	128	23 39
10	49	5 35	13	136	7 15
11	49	5 35	9	137	3 15
9	50	7 55	20	137	9 75
13	53	28 45	5	140	110 95
14	142	11 95	6	160	6 05
9	144	5 90	5	169	2 39
1	145	5 35			
2	158	3 15	8	183	5 20
3	158	3 15	23	192	8 70

And whereas said lands and town lots were duly offered for sale for the non-payment of said taxes by the collector of Garland county, and were duly stricken off to the State of Arkansas, and the time of redemption having expired the same were by the clerk of said county duly certified to the commissioner of State lands; and whereas I applied to said commissioner to purchase the same, and, upon payment to him of the said sums set opposite to each of said tracts and town lots as above, received from him three deeds containing all said lands and town lots, each dated the 16th day of June,
17 1887, and delivered on that day, one of said deeds conveying said tract of land, another conveying the first seventeen of said town lots, and the third conveying the remaining thirteen, paying for each of said deeds the sum of one dollar; and whereas I now hold title to said land and town lots under the said tax deeds, and desire that my title thereto be confirmed: Now, therefore, all persons who can set up any right to the lands so purchased in consequence of any informality or any irregularity or illegality connected with such sale are hereby called upon to show cause at term of the circuit court of Garland county to be held at Hot Springs on the fourth Monday in March, 1888, why the sale so made should not be confirmed.

R. W. MARTIN.

July 19, 1887.

U. M. & G. B. ROSE, *Attorneys.*

18 To Paul M. Cobbs, Esq., commissioner of State lands for the State of Arkansas.

SIR: Lot five (5), in block one hundred and forty (140), as platted upon the map of the United States reservation of the Hot Springs, in Garland county, State of Arkansas, conveyed by you, as commissioner of State lands, to R. W. Martin at private sale by your deed dated June 16th, 1887, for the consideration of $110.95, as upon forfeiture for the non-payment of taxes for the year 1884, is the property of Howard Parks Munger, aged thirteen; Grace E. Munger, aged eleven, and Robert Parks Munger, aged eight years, minors under the age of fourteen years, held in trust for them at the time of said supposed forfeiture by Francis Munger Barbour, their mother, who married Ormond Barbour April 3rd, 1884, prior to said supposed forfeiture and who is still living, the wife of said
19 Ormand Barbour, holding said land for said minors in trust.

The said minors and the said Francis Munger Barbour, in their right under the statues of the State, respectfully make application to you, as such commissioner, to be permitted to redeem said lot by the payment of the taxes, penalty, and costs due thereon and the interest required by law and all charges and fees which are herewith tendered you as such commissioner in lawfull money of the United States to the amount of one hundred and twenty-five dollars ($125.00), and request you take the steps required by law to perfect said redemption.

Given this 31st day of August, 1887.

HOWARD P. MUNGER,
GRACE E. MUNGER,
ROBERT P. MUNGER,
FRANCIS MUNGER BARBOUR,
By their next friend, ORMOND BARBOUR.

20 DEAR SIR: The land has been sold by the State; consequently you cannot redeem from the State; must redeem from Martin and through the courts, if necessary.

PAUL M. COBBS,
Commissioner of State Lands.

9, 3, 87.

The State of Arkansas to all whom these presents shall come, Greeting:

Know ye that the following-described land, situate in the county of Garland, in the State of Arkansas, was forfeited to the State for the non-payment of the taxes for the years 1884 as follows, to wit:

		Year forfeited.
Lots 9 & 20, block 139 Munger heirs.	Not listed on tax books of 1884.	
Lots 5 & 6, block 140		
" 14, " 142		
" 9, " 144		
" 1, " 145		
" 2 & 3, " 158	All in town of Hot Springs.	1884.
" 6, " 160		
21		
Lots 5, 169		
" 8, 183		
M. A. Ballentine.		
" 2 & 3, 192		

That the same now appears on the books of this office as vacant and subject to sale; and R. W. Martin having applied to *the* purchase the same and having paid into the State treasury the sum of two hundred and sixty-five dollars and sixty-four cents, the amount required to purchase said lands under an act amendatory of existing laws regulating the sale of the lands of the State, approved December 13th, 1875, and March 20th, 1879, therefore know ye that I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, for and in consideration of the premises and by virtue of an act to authorize the commissioner of State lands to make deeds in certain cases, ap-roved Dec. 13th, 1875, do by these presents grant and convey to the said above-named applicant, and to his heirs
22 and assigns forever all the right and title, interest and claim, of the State of Arkansas thereto; to have and to hold the same as was held or owned by the State unto the said grantee and to his heirs and assigns forever.

In testimony whereof I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, have hereunto set my hand and affixed my official seal, at Little Rock, Arkansas, this 16th day of June, A. D. 1887.

[SEAL.]

PAUL M. COBBS,
Commissioner of State Lands,
By C. B. MEYORS,
Deputy Commissioner.

Purchase	$265 64
Deeds	1 00
	266 64

Filed for record July 11th, 1887, at 4.30 p. m., Book U, p. 378.

W. H. NOYSTON, *Clerk.*

No acknowledgement.

23 In Circuit Court of Garland County, State of Arkansas. September Term, A. D. 1887.

FRANCIS MUNGER BARBOUR, HOWARD P. MUNGER, GRACE E. MUNGER, and ROBERT P. MUNGER, by Their Next Friend, ORMAND BARBOUR, Plaintiffs,
vs.
RUFER W. MARTIN and PAUL M. COBBS, Commissioner of State Lands of State of Arkansas, Defendants.
} Answer & Cross-Bill.

Come the said Francis Munger Barbour, married woman, wife of said Ormond Barbour; Howard P. Munger, aged thirteen; Grace E. Munger, aged eleven, and Robert P. Munger, aged eight years, by their next friend, Ormond Barbour, and for answer to the petition of said Rufus W. Martin, *ex parte*, filed herein, praying confirmation of the deed of Paul M. Cobbs, commissioner of State
24 lands of the State of Arkansas, conveying him the title of said State in lot 5, block 140, and other lots and lands, situate in the United States reservation of the Hot Springs, in Garland county, in said State, as forfeited for the non-payment of taxes for the year 1884, executed June 16th, 1887, not waiving their right to except and demur to the insufficiency of said deed and the manifest defects and informalities of said petition, and praying that this their answer may be taken also as their complaint and cross-bill against said petitioner and said Paul M. Cobbs as such commissioner of State lands, respectfully show to the court and state—

I.

That said Francis Munger Barbour is a married woman, the wife of said Ormond Barbour, with whom she intermarried in due form of law on the 3rd day of April, 1883, since when she has lived
25 and is now living with said Ormond Barbour as his lawful wife; that said Howard P. Munger, Grace E. Munger, and Robert P. Munger are minors under the age of fourteen years and have not and never had any other guardian than the said Francis Munger Barbour, who is their mother, and that they are the children and only heirs of Franklin J. Munger, deceased, who died December the 26th, 1881, and that said deed and all the proceedings upon which said deed is grounded are void as to them by reason of the coverture of said Francis Munger Barbour, and the non-age of said Howard P. Munger, who is under fourteen years of age, and Grace E. Munger, who is under twelve years of age, and Robert P. Munger, who is under ten years of age, and entitled either or every of them, upon application to said commissioner of State lands,
26 to redeem said lot or so much thereof as was assessed to them for said taxes, such application, with tender of one hundred and twenty-five dollars, lawful money, having been made by them to said commissioner of State lands on the 3rd day of September, 1887, to pay the taxes, penalty, and costs for which the same was so

claimed forfeited, amounting to one hundred and eleven $\frac{25}{100}$ dollars and interest, if interest should be due, and such tender and application having then been refused by said commissioner of State lands, which refusal, in writing, is appended hereto and prayed to be made a part hereof, marked Exhibit A.

II.

They further state in his behalf that lot 5, in block 140, as platted by the commissioner to lay off and dispose of the U. S. reservation of the Hot Springs, in said State and county, under the act
27 of Congress approved March 3rd, 1887, was by said commissioner duly awarded to John C. Adams, Jay L. Adams, William H. Renard, and Edward C. Adams December, 1879, and afterwards, May 10th, 1882, granted to them by patent certificate issued from the General Land Office of the United States upon said award in the year following said award, which "patent" is recorded in recorder's office of said county, Book M, pp. 70 & 71, and was by them, the said patentees and their respective wives, conveyed to Robert Thompson by deeds dated the 27th day of June, 1883, and the 21st day of September, 1883, and duly recorded in the office of recorder of said county in Book M, pages 70 & 71; that said Thompson erected and fitted up a first-class boarding-house on said lot, and by his deed dated the 10th day of March, 1882, duly recorded in said recorder's office of said county, conveyed said
28 premises to Emma Laley for the consideration of $10,000, said deed acknowledged and recorded in Book "H" of Deeds and Mortgages in said county, pages 426, 427, 428; and afterwards, on the 22nd day of September, 1883, said lot was by the said Emma Laley, as a single woman, conveyed by deed of general warranty to Francis M. Munger, who entered with said minors into possession under said deed, and was possessed of the premises from thence to the present time under said deed, which deed is duly recorded in Book "M" of Records of Deeds and Mortgages of said county, for the consideration of eleven thousand five hundred dollars, of which five thousand dollars were paid in lawful money to the said Emma Laley in hand at the execution of said deed and seven thousand five hundred dollars secured to be paid by the bond and mortgage of said Francis M. Munger, payable to the order of said
29 Emma Laley in four years, with interest at 8%, payable semi-annually, said bond being due Sept. 22nd, 1887 (not yet due), recorded Book "M," p. 93.

That at the date of said last-mentioned conveyance said Francis M. Munger Barbour was a widow, relict of Franklin J. Munger, who died Dec. 26th, 1881, and was the father of the above-named minors, and with a view to providing means for his said widow and children, on the — day of ——, A. D. 1879, insured his life in an insurance company of the city of Chicago, called the Northwestern Travelling Men's Association, by policy No. 2130, in the sum of $5,000.00, which sum of money was paid to the said Francis M. Munger by the said association on the 25th day of March, 1882, as the proceeds of said policy issued to said Franklin J. Munger for the

use and benefit of the said minors, children of said insurant,
30 who died intestate, leaving no other inheritance; that said identical fund so derived by the said Francis M. Munger in trust for said minors was the money paid to said Emma Laley for said lot and boarding-house and furniture by said Francis M. Munger, which became the home of herself and said children, from thence, in her efforts to provide a support for herself and said children, until, failing to find the business of keeping said boarding-house sufficiently remunerative, she rented out the same for —— dollars per month, and was married to said Ormond Barbour, of Carbondale, Illinois, on the 3rd day of April, 1884, and has lived with him as his wife ever since, endeavoring to support said minors with the rents and profits of said lot and house so partly paid for and mortgaged as aforesaid, applying said rents to no other
31 purpose, said minors having resided with her continuously since her purchase of said premises, dependent entirely upon her for their maintenance and education, with such assistance as may be voluntarily and generously contributed by her said husband.

III.

Your orators further say that upon renting out said house and removing from the city of Hot Springs they employed one W. W. Wiggs, a real estate agent of said city of Hot Springs, who subsequently absconded from said city and from the State of Arkansas without accounting for moneys in his possession of your orators and numerous other persons, to collect the rents of said house and lot and pay the taxes and assessments upon said realty and upon said personalty out of the proceeds, well believing said Wiggs would faithfully discharge the duties of said employment, but it has
32 so transpired, as your orators believe and charge, that said Wiggs, by connivance and conspiracy with said Rufus W. Martin or persons in the employ of said Rufus W. Martin to defraud your orators, neglected and failed to apply, of the abundant means in his hands therefrom, said rents to the payment of the taxes upon said realty for the year 1884 with the corrupt intention of permitting the same, without knowledge of your orators, to be sold for taxes and forfeited, that the same might be purchased by said defendant Martin as lot forfeited to said State for the non-payment of said taxes, taking care to pay the taxes for said year on said personalty, the distraint of which for taxes would immediately, by the tenants in possession, have been made known to your orators, whereby the same, on the 16th day of June, 1887,
33 notwithstanding other parties, as they are informed, Chas. Garratt and others unknown to your orators, were endeavoring to purchase said lot as so forfeited (as appeared by the records of this office of the clerk who certified the same to said commissioner of State lands), was, by the pretenses and the preferences of said commissioner, conveyed to said Rufus W. Martin, together with other lots on said reservation *en masse*, for the gross sum of two hundred and sixty-five $\frac{64}{100}$ dollars, by deed of that date, a copy of which last-

mentioned deed is appended hereto and prayed to be made a part hereof; which said deed the said Martin caused to be filed for record in the recorder's office of said county of Garland on the 11th July, 1887, and is recorded in Book U, p. 378, and by virtue thereof said Martin claims title to said lot as forfeited and conveyed to
34 him for the non-payment of taxes thereon for said year 1884, which said taxes, penalty, and costs for said year were one hundred and ten dollars and ninety-five cents, as the same appears on the tax book of said year and certificate of the clerk of the county court of said county of Garland, hereto appended and prayed to be made a part hereof; and your orators say that in furtherance of said conspiracy to defraud your orators and keep them in ignorance of the non-payment of the taxes for said year 1884 on said realty the said Wiggs, who was then county judge of said county, caused the clerk of the county court of said county (then in office) to cause said lot to be listed for taxes for the succeeding years, 1885 and 1886, and the taxes on said lot were by the collector accordingly regularly collected for said years 1885 and 1886 as if said lot had
35 not been sold to the State for the year 1884, and your orators thereby kept in ignorance of the non-payment of said taxes for said year 1884, and then and thereby prevented from discovering the proceedings being taken to deprive them of said valuable estate, but that at that time, doubtless unknown to said confederates, the said Francis M. Munger was a married woman and under coverture of her said marriage with said Ormond Barbour prior to the attempted return of said lot of land as delinquent, prior to said attempted advertisement and sale of the same for taxes for said year 1884, and at the date of the execution of said deed to said Martin by the commissioner of State lands, June 16th, 1887, and is still under such coverture as the lawful wife of said Ormond Barbour, and (it may be unknown to them) that she purchased and
36 held said lot as the trustee of said minors.

III.

Your orators further say that said deed of said commissioner of State lands for said lot 5, block 140, to said Rufus W. Martin is without validity and conveys no title to the grantee in consequence of defects and irregularities of record in the proceedings under which said conveyance was attempted to be made, following, to wit:

(1.) The assessor of said county of Garland, in which said lot is situate, did not within fifteen days after the 1st Monday in June, 1883, make out and deliver to the clerk of the county court of said county a return of the amount, description, and value, of the real property subject to be listed for taxation in said county, as by law he was required.

(2.) That said assessor had not, on or before the 1st day of
37 January succeeding his election and before entering on the duties of his office, taken and subscribed the oath of office as such assessor required of him by law.

(3.) That the clerk of the county court of said county did not, on or before the first (1st) Monday in February, 1883, make out and

deliver to said assessor the abstract containing a description of each tract of land situate in said county, including said lot, with name of the owner, if known, and the quantity of land contained therein, as provided by law.

(4.) That said clerk of the county court, after the supposed sale of said lot to the State for non-payment of taxes of the year 1884, continued to include said lot in the list of taxable property listed to its former owners for the taxes of the years 1885 and 1886, which were delivered to the collector and by him collected for said years
38 from the former owners the same as if said lot had not been sold to the State for the non-payment of the taxes of 1884.

(5.) That said clerk of the county court did not, on the first (1st) Monday in November, 1884, make out and deliver to the collector the list of real estate of said county, with his warrant thereto attached, authorizing said collector to collect said taxes in said county, as by law is provided.

(6.) That the collector of said county did not, by the first (1st) Monday in March, 1885, file with said clerk a list or lists of all taxes levied on real estate in said county (including said lot) which said collector had been unable to collect thereon, but failed to file any such list, with the affidavit attached thereto, required by
39 law, taken prior to the 27th April, 1885, and no such list being filed on the first (1st) Monday in March, 1885, said clerk had no authority to cause any delinquent list of lands in said county to be published with notice that the same would be sold by him on the 2nd Monday in April of said year, 1885, which 2nd Monday of April, 1885, was the 13th day of April.

(7.) That said clerk of said county court did not cause the list of lands delinquent in his county for non-payment of the taxes for 1884 as corrected by him to be published weekly for two weeks between the first Monday in March and *and* the second Monday in April of the year 1885, but caused them to be published for eight days only in said year 1885.

(8.) That said clerk did not immediately at the expiration
40 of two years allowed by law for the redemption of land sold for taxes, to wit, two years from the day of the supposed sale of said lot, on the 13th day of April, 1887, make the certificate of forfeiture to said commissioner of State lands required by law.

(9.) That said lot 5, block 140, was by said commissioner of State lands embraced in his said deed to petitioner therefor with other lots which were not within the limits of a city which is a city of the first class, and were not town lots of a city of the first class or of any other class, but were designated as "lots" by said Hot Springs commissioner under the requirements of the law authorizing them to lay off said reservation, to wit, lots 2 and three, in block 192, in the northeast corner of said reservation, beyond the corporate limits of the city of Hot Springs, and in the original forest beyond the
41 limits of said city, and if to be classed as lots are not lots of a city of the first class, and lots not being lots of a city of the first class forfeited prior to Feb'ry the 24th, A. D. 1885, were required to be advertised by the commissioner of State lands and sold

in conformity with the statute approved on said 24th February, 1885, and not otherwise, and said deed embracing the sale so unlawfully made of said lots 2 and 3, in block 192, is without validity, whereby, through said several illegalities, said deed is void and conveys no titles to petitioner which this court may lawfully confirm to said petitioner.

Respondents further say that through John D. Ware, their
42 agent at said city of Hot Springs, they tendered to said petitioner, in June, 1887, immediately after said deed was made known to them, one hundred and eleven $\frac{95}{100}$ dollars, the amount of taxes, penalty, costs, and interest as computed for them by said commissioner of State lands, but the same was by petitioner then refused, and they bring into court here one hundred and twenty-five dollars, and tender the same in redemption of said land, to be paid as the court may direct in this proceeding, and pray that they be decreed to have the right to redeem said lot upon the payment of said sum or so much thereof as may be lawfully due.

Respondants further say that the next March term, 1888, of said Garland circuit court will be the first circuit court which will be held in said county of Garland, in which said lot is situate, six months after the publication of the notice filed herein by said
R. W. Martin as a prerequisite to confirmation of the said
43 deed of said commissioner of State lands wherein for said lot, and that such confirmation could not be lawfully made or decreed at the present term of this court, held the 26th September, 1887, and the date of the first publication of said notice is the 30th July, 1887, and the date of the last publication thereof is 30th day of September, 1887, and that the affidavit of said publication is defective and does not show to what case or court it pertains or is entitled.

And, being remediless in the premises in a court of law, your orators, as complainants, by this their cross-bill apply to this court, where such matters are co*ngruz*able and relievable. On the grounds of the disabilities of your orators, fully stated herein, and the frauds and practices above mentioned, your orators pray that, upon payment by them of all dues and expenses incurred in respect
44 to said deed and sale to said petitioner, *that* said deed of said commissioner of State lands be declared void and be delivered up to be cancelled and be annulled by proper orders, and that the title of said heirs in said lot be quieted, and for their costs in this behalf expended, and for such other and further relief as to the court may seem meet and equitable.

And your respondents will ever pray, etc.

ORMAND BARBOUR,
As Next Friend of said Minor Heirs,
HOWARD PARKS MUNGER,
GRACE E. MUNGER,
ROBERT PARKS MUNGER,
By their solicitor, JOHN M. HARRELL.

STATE OF ILLINOIS, }
County of Jackson. }

45 Ormand Barbour states on oath that the matters and things stated in the foregoing answer and cross-bill, as stated on his own knowledge, are true, and as stated on information he believes to be true.

ORMAND BARBOUR.

Subscribed and sworn to before me this 1st day of Sept., 1887.

ISAAC H. CALDWELL,
[SEAL.] *Notary Public.*

[Endorsed:] No. 581. R. W. Martin, *ex parte.* Answer & cross-bill of O. Barbour, next friend of married woman and minors named herein. Filed Sept. 10th, '87. W. H. Moystry, cl'k, by Edw'd Reid, D. C. J. M. Harrell, for respondents.

R. W. Martin, *ex parte.* Answer of O. Barbour for minor heirs of F. J. Munger, deceased. J. M. Harrell, sol. for respondents.

46 In the Circuit Court of Garland County, State of Arkansas.
In Equity.

R. W. MARTIN, *ex Parte.* Petition to Confirm Tax Sale and an Answer & Cross-Bill.

FRANCIS MUNGER BARBOUR, HOWARD P. MUNGER, GRACE E. MUNGER, and ROBERT P. MUNGER, by Their Next Friend, ORMAND BARBOUR, Respondents,
vs.
R. W. MARTIN and PAUL M. COBBS, Commissioner of State Lands of the State of Arkansas, Defendants.

Petition for Removal to the Circuit Court of the United States for the Eastern District of Arkansas.

To said Garland circuit court:

Your petitioners, the said respondents and complainants in said cross-bill, respectfully show to this honorable court that the matter and amount in dispute in the preceding exceeds, exclusive of
47 interest and costs, the sum or value of two thousand dollars.

That the controversy in said suit is between citizens of different States, and that said petitioners herein for removal and complainants in said cross-bill, respondents to the petition of said R. W. Martin, were at the time of the filing his said petition and the execution of the deed therein mentioned and still are citizens of the State of Illinois; that said R. W. Martin was then and is still a citizen of the State of Arkansas.

And your petitioners offer herewith a bond, with good and sufficient security, for their entering in the circuit court of the United States for the eastern district of Arkansas, on the first day of its next session, a copy of the record in this suit and for paying all

costs that may be awarded by said United States circuit court
48 if said court shall hold that this suit and proceeding was wrongfully or improperly removed thereto, and they pray this court to proceed no further herein, except to make the order of removal required by law and accept the said surety and bond, and to cause the record herein to be removed unto said circuit court of the United States, and they will ever pray.

JOHN M. HARRELL,
Solicitor for said Respondents and Complainants.

Know all men by these presents that I, Ormand Barbour, as principal, and John D. Ware and —— ——, as sureties, are held and firmly bound unto R. W. Martin in the penal sum of two hundred and fifty (250.00) dollars; the payment whereof, well and truly to be made unto the said R. W. Martin, his heirs and assigns, we
49 bind ourselves, our heirs and assigns and legal representatives, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Francis Munger Barbour, Howard P. Munger, Grace E. Munger, and Robert P. Munger, by the said Ormand Barbour, as their next friend, having petitioned the circuit court of Garland county, State of Arkansas, for the removal of a certain cause therein pending, wherein R. W. Martin is petitioner for confirmation of title to land by a deed executed upon forfeiture for the non-payment of taxes, as is claimed, and said petitioners herein are respondents and complainants on cross-bill therein, to the circuit court of the United States for the eastern district of Arkansas:

Now, if your petitioners herein, by the said Ormand Barbour, as their next friend, shall enter into the said circuit court
50 of the United States on the first day of its next session a copy of the record for said suits and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this 26th day of September, 1887.

ORMAND BARBOUR, [SEAL.]
By his attorney, J. M. HARRELL.
JOHN D. WARE. [SEAL.]

51 [Endorsed:] No. 581. R. W. Martin, *ex parte*, *vs.* Ormand Barbour, as next friend, respondent, etc. Petition and bond of respondent for removal to *to A.* circuit court, eastern district of Arkansas. John M. Harrell, att'y for respondents. Filed Oct. 6, 1887. W. H. Moystry, clerk.

52 In Garland Circuit Court. In Chancery. Sept. Term, 1887.

Be it remembered that at a regular term of the circuit court of Garland county, Arkansas, which was begun and held at the courthouse of Garland county on Monday, the 26th day of September,

1887, said day being the time prescribed by law for holding a term of said court, there was present and presiding the Hon. J. B. Wood, judge of the 7th judicial circuit *court* of the State of Arkansas, of which the county of Garland forms a part, when the following proceedings were had, to wit:

Ordered that court be proclaimed open for the transaction of business; which was accordingly done by the sheriff of Garland county, Arkansas.

53 Afterwards, to wit, on the 7th day of said court of said term, among other, the following proceedings were had:

Ex Parte Petition of R. W. MARTIN.

Now, on this day, comes Francis Munger Barbour and others, by their attorney, John M. Harrell, Esq., and, upon leave had, file their petition and bond for removal to the U. S. circuit court for the eastern district of Arkansas.

54 *Clerk's Certificate to Transcript.*

STATE OF ARKANSAS, }
County of Garland. }

I, Wm. H. Mayston, clerk of the circuit court within *within* and for the county and State aforesaid, do hereby certify that the annexed and foregoing pages contain a true and complete transcript of the original papers and record entries *In re* R. W. Martin, *ex parte*, for confirmation of tax title—Ormand Barbour, respondent—as therein set forth and as the same appears of record and on file in my office.

Witness my hand and official seal this 10th day of November, 1887.

WM. H. MOYSTON, *Clerk*,
By EDWARD REID, *D. C.*

55 STATE OF ARKANSAS, }
County of Garland. }

I, Wm. H. Moyston, clerk of the circuit court, do hereby certify that the costs in the above-entitled cause *is* as follows:

To Wm. H. Moyston, clerk ---- ---------- 6 00

[L. S.] Witness my hand and seal this 10 day of November, 1887.

WM. H. MOYSTON, *Clerk*,
By EDWARD REID, *D. C.*

Filed Dec. 8, 1887.

RALPH L. GOODRICH, *Clerk.*

56 And on December 13th, 1887, the following replication was filed:

United States Circuit Court, Eastern District of Arkansas, at Little Rock.

R. W. MARTIN, *ex Parte*,
ORMAND BARBOUR, Respondent.

Replication.

This repliant says that he will aver, maintain, and prove his bill herein to be true, certain, and sufficient in law, and that the answer of the defendant is untrue, evasive, and insufficient in law; without that, that anything in said bill contained and not herein sufficiently traversed and denied, confessed and avoided, is true.

U. M. & G. B. ROSE.

Endorsed: Filed Dec. 13, 1887. Ralph L. Goodrich, clerk.

And on February 10th, 1888, the following proceedings were had, to wit:

57 R. W. MARTIN, *ex Parte*.

It is ordered by the court that the deposition- of W. H. Moyston, E. S. Reid, and John D. Ware be opened and published by the clerk of this court. Comes John M. Harrell, Esq., and files herein his exhibit to cross-bill.

Which exhibit is as follows:

Office of recorder of deeds, city of St. Louis, Mo. William A. Hobbs, recorder.

STATE OF MISSOURI, *City of St. Louis*, } ss:

No. 10690.

This license authorizes any judge, justice of the peace, licensed or ordained preacher of the Gospel, or other person authorized under the laws of this State to solemnize marriage between Ormand Barbour, of Carbondale, and State of Illinois, who is over the age of twenty-one years, and Mrs. F. M. Munger, of Hot Springs, and State of Ark., who is over the age of eighteen years.

Witness my hand, as recorder, with the seal of office hereto
58 affixed, at my office, in the city of St. Louis, the 3rd day of April, 1884.

Copy of seal:

[Recorder of Deeds Seal, St. Louis, State of Missouri.]

THOS. F. FARRELLY, *Recorder*.

STATE OF MISSOURI, *City of St. Louis*, } ss:

This is to certify that the undersigned, a minister of the gospel, did, in said city and State, on the third day of April, A. D. 1884, unite in marriage the above-named persons.

ZACHARY EDDY,
Pilgrim Cong'l Church, St. Louis.

Filed for record this 4th day of April, 1884.

THOS. F. FARRELLY, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned recorder of deeds for said city and State, do hereby certify that the foregoing is a true copy of the marriage license and certificate of marriage of Ormond Barbour and F. M. Munger, together with the date of filing and recording thereof, as the same remains of record in my office, in Marriage Record (licensed) Book No. 26, at page 402; and I further certify that I am the legal custodian of said marriage record.

Witness my hand and official seal this 17th day of January, 1888.

[SEAL.] WM. A. HOBBS, *Recorder.*

59 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, James A. Sedden, presiding judge of the circuit court of the eighth judicial circuit of the State of Missouri (which circuit is composed of the city aforesaid, and said court being a court of record in and for said city and State), certify that Wm. A. Hobbs, whose signature appears to the foregoing certificate, is and was at the time of signing the same recorder of deeds for the city of St. Louis; that the said attestation is in due form and by the proper officer.

Given under my hand this eighteenth day of January, 1888.

JAMES A. SEDDEN,
Presiding Judge of the Circuit Court of the Eighth Judicial Circuit of the State of Missouri.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Philip H. Zepp, clerk of the circuit court, city of St. Louis (the same being a court of record in and for said city and State), certify that James A. Sedden is presiding judge of the circuit court of the eighth judicial circuit of the State of Missouri, duly commissioned and qualified.

60 In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this eighteenth day of January, eighteen hundred and eighty-eight.

[SEAL.] PHILIP H. ZEPP, *Clerk.*

Endorsed: Filed February 10, 1888. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

And on February 11th, 1888, the following proceedings were had, to wit:

Come the respondents, by John M. Harrell, Esq., their solicitor, and file herein their amendment to their answer and cross-bill, and

comes R. W. Martin, by U. M. & G. B. Rose, Esqs., his solicitors, and files herein his amendment to bill; which amendment to answer is as follows:

In the Circuit Court of the United States for Eastern District of Arkansas.

R. W. MARTIN, *ex Parte*,
v.
ORMAND BARBOUR, FRANCIS M. BARBOUR, *et al.*
} Amendment to Answer and Cross-Bill.

61 And the said respondents, by way of amendment to their answer and cross-bill in said cause, further state—

I.

That neither the said list of real estate assessed for taxes for the year 1883 and 1884, for the non-payment of which said lot 5, block 140, of the United States reservation of the Hot Springs, in Arkansas, was attempted to be forfeited, nor said deed of the commissioner of State lands describes the lot conveyed by said deed by metes and bounds or area or by reference to any official map so as to identify said lot as that owned by your orators, to wit, lot numbered 5, in block numbered one hundred and forty, of the U. S. reservation of the Hot Springs, in Arkansas, as laid off and platted on the official map of said reservation liable for said taxes, but said lot on said assessment list and in petitioner's petition and in the deed of said commissioner of State lands is described as a lot of the town of Hot Springs in said deed and a lot of the city of Hot Springs in said assessment list, and the said town or city of Hot Springs was not and is not identical with said reservation, and there is no
62 official map of said city or town of Hot Springs, by reference to which said lot 5, block 140, of said reservation may be identified as lots of said city or town, and that the consideration, am't of taxes, penalty, & costs paid for same is not stated in said deed.

II.

That said supposed deed of said commissioner of State lands purports to be executed by one C. B. Meyers as "deputy commissioner," and respondent states that there is no such office as deputy commissioner authorized to execute deeds conveying the lands of the State of Arkansas to purchasers at a sale of the same for non-payment of taxes, and that said C. B. Meyers had not been duly appointed and qualified as such deputy commissioner at the date of the deeds exhibited with said petition, to wit, June 16th, 1887.

JOHN M. HARRELL,
Att'y for Respondents.

Notice of filing hereby accepted and further notice waived:
U. M. & G. B. ROSE.

Endorsed: Filed February 11, 1888. Ralph L. Goodrich, clerk.

63 Which amendment to bill is as follows:

United States Circuit Court, Eastern District of Arkansas, Western Division.

R. W. MARTIN, *ex Parte*,
v.
ORMAND BARBOUR, Respondent.

The complainant, by way of amendment to his bill herein, waives an answer under oath.

U. M. & G. B. ROSE.

Endorsed: Filed February 11, 1888. Ralph L. Goodrich, clerk.

And on February 16, 1888, the following proceedings were had:

Comes R. W. Martin, by U. M. & G. B. Rose, Esqs., his solicitors, and files herein his answer to cross-bill.

Which answer to cross-bill is as follows:

United States Circuit Court, Eastern District of Arkansas, Western Division.

64 R. W. MARTIN, *ex Parte*,
v.
ORMOND BARBOUR, Respondent.

Answer to Cross-Bill.

Reserving all benefit of exception to the many errors therein contained, the petitioner, by way of answer to the cross-bill herein, says:

1st. He is not advised as to whether the said Francis M. Barbour is a married woman or whether she has the children mentioned in the first paragraph of her answer and cross-bill. He denies that said Francis M. Barbour or said children have any right to redeem said property.

2nd. He knows nothing of the claim of title under which respondent claims to be the owner of said property. He denies that said property was bought with any money belonging to the said minors, but says that the funds with which the property was purchased belonged exclusively to said Francis M. Barbour.

3. He knows nothing of the alleged transactions of said
65 Wiggs, and the respondent denies that he had anything to do with the said Wiggs, or that he was ever even acquainted with him. He knows nothing of any alleged fraudulent conspiracy on the part of the said Wiggs and had nothing to do therewith.

4 A. It is not true that the assessor failed to return the assessment list at the time required, but in truth and fact said list was duly returned on the day provided by law.

B. It is not true that the said assessor assessing said property failed to take the oath of office, but he says that said oath was duly taken as required by law.

C. It is not true that the clerk failed to deliver to the assessor the abstract containing each tract of land in said county, with the name of the owner and the quantity of land contained therein, as provided, but the same was duly done at the time and in the manner prescribed by law.

D. The petitioner is not informed whether the clerk of the county court placed said lands upon the tax books for the years 1885 and 1886 nor is he advised that that is material.

E. It is not true that the clerk of the county court failed
66 to make out and deliver to the collector the list of real estate in said county, with his warrant attached thereto, directing said collector to collect said taxes in said county, as by law required, but in truth said list and warrant were duly delivered at the time and in the manner prescribed by law.

F. It is not true that the collector failed to return to the county clerk the list of lands upon which he was unable to collect taxes, but said list was duly returned at the time and in the manner required by law.

G. It is not true that the list of lands delinquent for taxes was published for only eight days, but the same was published for the time and in the manner required by statute.

H. It is not true that the clerk upon the expiration of two years from the date of the sale failed to make out to the commissioner of said lands the certificate required by law, but said certificate was duly made and transmitted.

I. The act of February 24, 1885, has no bearing upon this forfeiture, and the same applies only to lands forfeited prior to its passage.

67 J. It is not true that the respondents, through their agent, John D. Ware, or in any other way, has made to the petitioner any tender of the amount paid out by him for the purchase of said land or any other sum.

And, having fully answered, the petitioner asks to be hence dismissed with his costs.

U. M. & G. B. ROSE.

I say that the statements contained in the foregoing answer, in so far as they are made positively, are true, and in so far as they are made upon information and belief are verily believed to be true.

R. W. MARTIN.

Subscribed & sworn to before me this 16th day of February, 1888.

[SEAL.] N. W. COX,
Notary Public.

Endorsed: Filed February 16, 1888. Ralph L. Goodrich, clerk.

68 And on February 23, 1888, the following proceedings were had, to wit:

Comes the complainant, by U. M. & G. B. Rose, Esqs., his solicitors, and files herein his exhibits, which exhibits are as follows:

1.

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, ARKANSAS.

I, E. B. Moore, secretary of state of Arkansas, do hereby certify that the annexed pages contain a true, complete, and full copy of the appointment and duplicate official oath of Chas. B. Meyers as deputy commissioner of State lands, filed in this office Feb'y 16th, 1888, as appears by comparing the same with the original roll of said appointment now on file in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Little Rock, this 18th day of Feb'y, A. D. eighteen hundred and eighty-eight.

Seal Secretary of State of Arkansas.

E. B. MOORE,
Secretary of State.

69 STATE OF ARKANSAS, }
City of Little Rock. }

I, Paul M. Cobbs, commissioner of State lands within and for the State of Arkansas, do hereby elect, constitute, and appoint Chas. B. Meyers my lawful deputy, for me and in my stead to do and perform any and all the duties of the commissioner of State lands the same as I might or could do in my own proper person.

This appointment is made and intended to relate back and take effect as of the 1st day of Nov., 1886, the time when this appointment was made, but failed to be filed with the secretary of state, as required by law, through an oversight; and I hereby ratify and confirm any and all of his official acts as such deputy from or since said November 1st, 1886.

Given under my hand and official seal, at office, in the city of Little Rock, this 16th day of February, 1888.

Seal Com'r St. L.

PAUL M. COBBS,
Com'r of State Lands for the State of Arkansas.

70 STATE OF ARKANSAS, }
County of Pulaski. }

I, Chas. B. Meyers, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Arkansas and the laws thereof, and that I will faithfully and honestly perform the duties incumbent upon me as deputy commissioner of State lands, upon which I am about to enter under my appointment by Hon. Paul M. Cobbs, commissioner of State lands, on the date named herein.

CHAS. B. MEYERS.

Sworn to and subscribed before me this 16th day of February, 1888.

[SEAL.]

S. R. BROWN,
Clerk of Pulaski Chancery Court.

Endorsed: Filed February 23, 1888. Ralph L. Goodrich, clerk.

#2.

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, ARKANSAS.

71 I, E. B. Moore, secretary of state of Arkansas, do hereby certify that the annexed pages contain a true, complete, and full*y* copy of the letter of appointment and duplicate official oath of Chas. B. Meyers, as deputy commissioner of State lands, filed in this office Dec'r 29th, 1885, as appears by comparing the same with the original roll of said letter of appointment now on file in this office.

Seal of the Secretary of State, Arkansas.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Little Rock, this 14th day of February, A. D. eighteen hundred and eighty-eight.

C. B. MOORE,
Secretary of State.

OFFICE OF COM'R OF STATE LANDS,
LITTLE ROCK, ARK., *Dec'r 29th*, 1885.

To whom it may concern:

I, Paul M. Cobbs, commissioner of State lands for the State of Arkansas, do hereby constitute and appoint Chas. B. Meyers my true and lawful deputy commissioner of State lands, hereby
72 giving him full and complete authority and power to perform any and all official act or acts the same that I might or could lawfully do or perform as such commissioner, and I hereby ratify and confirm any and all of his lawful official act or acts as such deputy commissioner of State lands.

[SEAL COM. S. L.]

PAUL M. COBBS,
Com'r of State Lands.

STATE OF ARKANSAS, }
County of Pulaski, } *ss:*

I, Chas. B. Myers, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Arkansas and the laws thereof, and that I will faithfully and honestly discharge the duties incumbent upon me as deputy commissioner of State lands, upon which I am about to enter under my appointment by Hon. Paul M. Cobbs, com'r of State lands, on the date named herein.

C. B. MYERS.

Sworn to and subscribed before me this 29 day of Decem-
73 ber, 1885.

D. W. CARROLL,
Chancelor for 1st Chancery Dist. for the State of Arkansas.

The appointment of Rob't V. Yeakle as deputy com'r of State lands, heretofore made, is hereby revoked and held for naught.

PAUL M. COBBS,
Com'r of State Lands.

Dec'r 29th, 1885.

Endorsed: Filed Feb. 23, 1888. Ralph L. Goodrich, clerk.

And on March 3, 1888, the following proceedings were had, to wit: Comes the defendant, by John M. Harrell, Esq., his solicitor, and files herein his exhibits, which exhibits are as follows:

3.

Answer of Paul M. Cobbs to Interrogatories of Respondents.

LITTLE ROCK, *March 3rd*, 1888.

74 It is agreed that the answers of Paul M. Cobbs, commissioner of State lands, shall be evidence in the cases of R. W. Martin, *ex parte*, *vs.* Ormand Barbour *et al.*, respondents, and R. W. Martin, *ex parte*, *vs.* H. A. Ballentine, respondent, pending in the United States circuit court for the eastern district of Arkansas, on removal from Garland circuit court.

Interrogatory 1. Please state date of reception by you of the clerk's first certificate of lands and lots sold for non-payment of taxes in Garland county for year 1884.

Int. 2. State when or how long afterwards until the second certificate, correcting the first, was received by you.

Int. 3. Please state whether any one, for Mrs. Francis M. Barbour, tendered you $125.00 or any money to redeem the lot claimed by her in said county for herself and minor children.

Int. 4. How did R. W. Martin purchase said lots—at private or public sale; and did he pay money to you or check for the money and in what actual amount?

Int. 5. When did he first speak to you about purchasing?

U. M. & G. B. ROSE.
J. M. HARRELL.

75 Ans. to Intg. 1. I have no record of the date when clerk's certificate was first received at this office, but I find the certificate is dated May 26, 1887, and I presume it was received a day or two afterwards. It was retu-ned for correction.

Ans. to Int. 2. The list was corrected, returned, and filed in my office June 16, 1887.

Ans. to Int. 3. The application of Mrs. Francis M. Barbour to redeem lot 5, bl'k 140, town of Hot Springs, for herself and minor children was made to me September 3d, 1887. Said application was accompanied with $125.00.

Ans. to Int. 4. R. W. Martin purchased said lot June 16th, 1887, at private sale. The purchase-money & fee was paid by him into the State treasury.

Ans. to Int. 5. Can't say, but his application to purchase was made to my office on the 16th June, 1887.

PAUL M. COBBS,
Commissioner of State Lands.

Endorsed: Filed March 3, 1888. Ralph L. Goodrich, clerk.

76 # 4.

Certificate of Secretary of State to Appointment of Paul M. Cobbs.

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, ARKANSAS.

I, E. B. Moore, secretary of state of Arkansas, do hereby certify that the annexed pages contain a true, complete, and full copy of the civil record containing the names, dates of commissions, and dates of qualifications of State officers for the years 1884 & 1886, so far as the same relate to the dates of commissions and qualifications of Paul M. Cobbs, com'r of State lands for those years, as appears by comparing the same with the original copy of said civil record now on file in this office.

Seal of the Secretary of State, Arkansas.

In testimony whereof I have herennto set my hand and affixed my official seal, at Little Rock, this 2d day of March, A. D. eighteen hundred and eighty-eight.

E. B. MOORE,
Secretary of State.

77 Date of com. Name. Office. When qualified.

Oct. 30, 1884---Paul M. Cobbs--Com'r State lands--Nov. 5th, 1884.
Oct. 30th, 1886--Paul M. Cobbs--Com'r State lands--Oct. 30th, 1886.

Fee, $1.00, paid by J. M. Harrell.

E. B. MOORE.
Sec't'y of State,
By E. C. JOHNSON, *Deputy.*

Endorsed: Filed Mar. 3, 1888. Ralph L. Goodrich, clerk.

5.

Statement as to Value by J. M. Harrell.

In United States Circuit Court, Eastern District of Arkansas.

R. W. MARTIN, *ex Parte*,
v.
ORMAND BARBOUR *et al.*, Respondents; H. A. BALLENTINE, Respondent.

78 I, John M. Harrell, state on oath that I am acquainted with the values of real estate in Garland county; have been attorney in numerous sales and transactions in lots and lands in

said county during the last ten years; had charge of the lands of estate of E. W. Gantt, just north of sec's 1, 2, & 3, in block 192, U. S. reservation of the Hot Springs, in Arkansas; have frequently been upon S. W. S. E. sec. 9, T. 3 S., R. 19 W., and estimate said lots and improvements as worth more than two thousand dollars alone and that said forty acres and improvements as of the value of over two thousand dollars.

JOHN M. HARRELL.

Accepted as correct.

U. M. & G. B. ROSE.

Endorsed: Filed Mar. 3, 1888. Ralph L. Goodrich, clerk.

79 And on March 10th, 1888, the following proceedings were had, to wit:

Comes the respondent, by J. M. Harrell, Esq., his solicitor, and files herein his amendment to cross-bill.

Which amendment to cross-bill is as follows:

In Circuit Court of United States for Eastern District of Arkansas.

R. W. MARTIN, *ex Parte*,
v.
ORMAND BARBOUR *et al.*, Respondents.

Come the said respondents Ormand Barbour *et al.*, and for an additional amendment to their cross-bill herein file the following: Respondents hereby waive answer under oath to their said cross-bill heretofore filed herein.

ORMAND BARBOUR ET AL.,
By their solicitor, J. M. HARRELL.

Endorsed: Filed Mar. 10, 1888. Ralph L. Goodrich, clerk.

80 On March 5, 1888, the following exhibit was filed:

6.

STATE OF ARKANSAS,
County of Garland.

I, Ellis Woolman, do solemnly swear that I am the publisher of the Hot Springs Weekly Sentinel, a weekly newspaper printed and published in Garland county, State of Arkansas; that I was such publisher at and during the publication of the annexed legal advertisement in the matter of the sale of lands delinquent for the taxes of 1884 in said county and at the dates of the several publications of said advertisement hereinafter stated, and that during said periods and at said dates said newspaper was printed and had a *bona fide* circulation in said county; that said newspaper had been regularly printed and published in said county and had a *bona fide* circulation therein for the period of one month next before the date of

the first publication of said advertisement, and that said advertisement was published in the regular weekly issues of said news-
81 paper once a week for three consecutive weeks; the first publication thereof had been made on the 9th day of May, 1885, the second on the 16th day of May, 1885, the third on the 23rd day of May, 1885, and the fourth on the — day of ——, 188–.

ELLIS WOOLMAN.

Subscribed and sworn to before me this 17th day of February, 1888.

[SEAL.] CHAS. D. GREAVES,
Notary Public.

Fee, 50c., paid.

Endorsed: Filed Feb. 23, 1888. W. H. Moyston, clerk.

Clerk's Certificate to Transcript.

STATE OF ARKANSAS, }
County of Garland. }

I, W. H. Moyston, clerk of the circuit & *ex officio* clerk of the county court within and for the county and State aforesaid, do hereby certify that the annexed and foregoing pages contain a true copy of the proof of publication of the sale of delinquent lands for the year 1884, as therein set forth and as the same appears on file in my office, Hot Springs, Garland county, Arkansas.

82 Witness my hand *an* and official seal this 23rd day of February, 1888.

W. H. MOYSTON, *Clerk.*

STATE OF ARKANSAS, }
County of Garland. }

I hereby certify that attached to the foregoing proof of publication is the same printed advertisement of tax sale copied in the transcript in reference to the assessment, collection, and sale for taxes of the year 1884, furnished U. M & G. B. Rose under my certificate and seal on the 15th day of February, 1888.

[SEAL.] Witness my hand and official seal this — day of February, 1888.

WM. H. MOYSTON, *Clk,*
By EDWARD REID, *D. C.*

Endorsed: Filed March 5, 1888. Ralph L. Goodrich, clerk.

And on March 7th, 1888, the following exhibit was filed:

83 *Deed for Forfeited Lands Sold.*

No. —.

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye that the following-described land, situate in the county

of Garland, in the State of Arkansas, was forfeited to the State for the non-payment of the taxes for the years 1884, as follows, to wit:

				Year forfeited.
Lot	1,	block	28	
"	6,	"	33	
"	4,	"	41	
"	2,	"	44	
"	5 & 6,	"	47	
"	10 & 11,	"	49	
"	9,	"	50	
"	13,	"	53	All in town of Hot Springs ---------- 1884.
"	3,	"	67	
"	7 & 8,	"	72	
"	6,	"	74	
"	5,	"	75	
"	9,	"	128	
"	13,	"	136	

That the same now appears on the books of this office as
84 vacant and subject to sale; and R. W. Martin having applied to purchase the same, and having paid into the State treasury the sum of one hundred and sixty-two dollars and fifty-six cents, the amount required to purchase said land under "An act amendatory of existing laws regulating the sale of the lands of the State," approved December 13, 1875, and March 10, 1879:

Therefore know ye that I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, for and in consideration of the premises and by virtue of "An act to authorize the commissioner of State lands to make deeds in certain cases," approved December 13, 1875, do by these presents grant and convey to the said above-named applicant and to his heirs and assigns forever all the right, title, interest, and claim of the State of Arkansas thereto:

To have and to hold the same as now held or owned by the State unto the said grantee and to his heirs and assigns forever.

In testimony whereof I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, have hereunto set my hand and
[L. S.] affixed my official seal, at Little Rock, Arkansas, this 20th day of February, A. D. 1888.

P. M. COBBS,
Commissioner of State Lands.

85 Upon which deed appears the following endorsement:

This deed is made at the request of the vendee, R. W. Martin, in place of a deed heretofore executed to him on the 16th day of June, 1887, and numbered 8866, on account of a supposed error in the execution of the same.

Witness my hand and official seal of office, in Little Rock, Ark., this 20th day of February, 1886.

P. M. COBBS,
Commissioner of State Lands.

86 *Deed for Forfeited Lands Sold.*

No. —.

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye that the following-described land, situate in the county of Garland, in the State of Arkansas, was forfeited to the State for the non-payment of the taxes for the years 1884, as follows, to wit:

				Year forfeited.
Lots	9 & 20,	block	137	
"	5 & 6,	"	140	
"	14,	"	142	
"	9,	"	144	
"	1,	"	145	
"	2 & 3,	"	158	All in town of Hot Springs ..... 1884.
"	6,	"	160	
"	5,	"	169	
"	8,	"	183	
"	2 & 3,	"	192	

That the same now appears on the books of this office as vacant and subject to sale; and R. W. Martin having applied to purchase the same, and having paid into the State treasury the sum of two hundred and sixty-five dollars and sixty-four cents, the amount required to purchase said land under "An act amendatory of
87 existing laws regulating the sale of the lands of the State," approved December 13, 1875, and March 10, 1879:

Therefore know ye that I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, for and in consideration of the premises and by virtue of "An act to authorize the commissioner of State lands to make deeds in certain cases," approved December 13, 1875, do by these presents grant and convey to the said above-named applicant and to his heirs and assigns forever all the right, title, interest, and claim of the State of Arkansas thereto:

To have and to hold the same as now held or owned by the State unto the said grantee and to his heirs and assigns forever.

In testimony whereof I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, have hereunto set my hand and affixed my official seal, at Little Rock, Arkansas, this 20th day of February, A. D. 1888.

[L. S.]

PAUL M. COBBS,
Commissioner of State Lands.

Purchase	265	64
Deed	1	00
	266	64

Upon which deed appears the following endorsement:

88 This deed made at the request of the vendee, R. W. Martin, in place of a deed heretofore executed to him on the 16th

day of June, 1887, and numbered 8867, on account of a supposed error in the execution of the same.

Witness my hand and official seal, at office, in Little Rock, Ark., this 20th day of February, 1888.

P. M. COBBS,
Commissioner of State Lands.

Deed for Forfeited Lands Sold.

No. —.

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye that the following-described land, situate in the county of Garland, in the State of Arkansas, was forfeited to the State for the non-payment of the taxes for the years 1884, as follows, to wit:

Parts of section.	Sec.	Township.	Range.	Acres.	Year forfeited.
S. W. ¼ S. E. ¼----	9	3 S.	19 W.	40.00	1844

That the same appears on the books of this office as vacant
89 and subject to sale; and, R. W. Martin having applied to purchase the same, and having paid into the State treasury the sum of fifty dollars and — cents, the amount required to purchase said land under "An act amendatory of existing laws regulating the sale of the lands of the State," approved December 13, 1875, and March 10, 1879:

Therefore know ye that I, P. M. Cobbs, commissioner of State lands for the State of Arkansas, for and in consideration of the premises and by virtue of "An act to authorize the commissioner of State lands to make deeds in certain cases," approved December 13, 1875, do by these presents grant and convey to the said above-named applicant and to his heirs and assigns forever all the right, title, interest, and claim of the State of Arkansas thereto:

To have and to hold the same as now held or owned by the State unto the said grantee and to his heirs and assigns forever.

In testimony whereof I, P. M. Cobbs, commissioner of
[L. S.] State lands for the State of Arkansas, have hereunto set my hand and affixed my official seal, at Little Rock, Arkansas, this 20th day of February, A. D. 1888.

P. M. COBBS,
Commissioner of State Lands.

90 Upon which deed appears the following endorsement:

This deed is made at the request of the vendee, R. W. Martin, in place of a deed heretofore executed to him on the 16th

day of June, 1887, and numbered 8865, on account of a supposed error in the execution of the same.

Witness my hand and official seal, at office, in Little Rock, Ark., this 20th day of February, 1888.

P. M. COBBS,
Commissioner of State Lands.

Endorsed: Filed March 7, 1888. Ralph L. Goodrich, clerk.

And on March 10, 1888, the following exhibit was filed:

8.

Transcript of Proceedings of Board of Equalization.

TUESDAY MORNING, 9 O'CLOCK, *July 3d*, 1883.

The board of equalization of Garland Co., Arkansas, met pursuant to adjournment.

91 Present and presiding: The Hon. J. M. Harrell, Ezekiel Golden, and R. W. Gibbons.

Among other the following proceedings were had:

Whereas this board of equalization for Garland county, composed of John M. Harrell, Rob't W. Gibbons, and Ezekiel Golden, who each possess the qualifications required by law and were duly commissioned as members of said board, and before entering upon the discharge of their duties as members of said board were, June 4th, 1883, by the clerk of said county duly administered the oath prescribed in section 20, article 19, of the constitution of Arkansas and the oath prescribed by the 84th section, act of the General Assembly of Arkansas approved March 31st, 1883, and on said 4th day of June, 1883, organized as said board, and adjourned to the 19th day of June, 1883, and on said 19th day of June, 1883, adjourned to the 25th day of June, 1883, for the causes set forth in their several orders of adjournment entered in the record of the proceedings of said board; and whereas, having met, pursuant to said last-mentioned adjournment, on the 25th day of June, 1883, said board proceeded to ascertain the money value of the real property of said county and to equalize the same through-

92 out said county, and were so occupied continually while in session, from day to day, until Monday, July 2nd, 1883, and were then in session, when, upon said 2nd day of July, 1883, at 9 o'clock a. m., said board completed the equalization of the real estate of said county by actual examinations and valuation and appropriate orders drawn as the orders of said board at an early hour and before the county court of said county had met upon said 2nd day of July, 1883, for the purpose of levying the county taxes and making appropriations for the expense of the county, in order that the returns of the assessor of real and personal property of said county and the orders of this board showing the valuation and equalization by said board of said real and personal property might be laid before said county court for making such levy and appropria-

tions; and whereas, said board *upon* being informed that the county court had adjourned until Tuesday, 10 o'clock a. m., July 3d, 1883, to give time to said board to have their said valuation and equalization entered in the proper column of said return of real estate, competent persons, to wit, E. H. Johnson and C. W. Fry, citi-
93 zens of said county, were, by Geo. G. Lutta, Esq., employed to assist the clerk of said board in making said entries in the proper columns of said return of real estate, and were so engaged and in possession of said return in presence of said board on the 2nd day of July, 1883, when Job Pritchard, deputy sheriff of said county, came before said board then in session and occupied by their duties as aforesaid, and stated verbally that he was ordered by the Hon. W. W. Wiggs, county judge of said county, to take said returns, both of real and personal property, to him immediately, and that if they were not so delivered *to* the said Job Pritchard should take said returns forcibly; said board objected to the taking of the said return of real estate by said Pritchard until lawfully notified that it was needed by the county court, and thereupon, without written warrant or process of any kind, said Job Pritchard then and there forcibly took from the possession of said E. H. Johnson and C. W. Fry, employed as aforesaid, and from the custody of said board the said return
94 of said county, in contempt of the authority of said board: It is therefore considered and adjudged that the conduct of the said Job Pritchard as aforesaid deserves the censure of this board as an act in gross contempt of said board and contrary to the forms of the statute in such cases made and provided and against the peace of said State.

Ordered that a copy of this entry be forwarded to the prosecuting attorney of the 7th judicial circuit of said State:

Ordered that the board of equalization of Garland county, Ark., be, and is, adjourned until called to meet again by the president of said board.

JOHN M. HARRELL, *President.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

Clerk's Certificate to Transcript.

STATE OF ARKANSAS, }
County of Garland. }

I, W. H. Moyston, clerk of the circuit and *ex officio* clerk of the county court within and for the county and State aforesaid,
95 do hereby certify that the annexed and foregoing pages contain a true and complete copy of the entry made by board of equalization on the 3rd day of July, 1883, as therein set forth and as the same appears of record, on pages 344, 345, Record County Court Garland County, Arkansas.

Witness my hand and official seal this 12th day of March, 1888.

W. H. MOYSTON, *Clerk.*

Endorsed: Filed Mar. 10, 1888. Ralph L. Goodrich, clerk.

96 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the ninth day of April, anno Domini one thousand eight hundred and eighty-eight, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on April 9th, 1888:

Comes the petitioner, by U. M. & G. B. Rose, Esqs., his solicitors, and the respondent, by J. M. Harrell, Esq., his solicitor, and this cause having been heretofore submitted to the court, and the court, being now sufficiently advised in the premises, doth dismiss the petition for want of equity.

It is further decreed that the petitioner have a lien upon the land in suit, to wit, lot five, block one hundred and forty, in the city of Hot Springs, Arkansas, for the sum of one hundred and ten & $\frac{95}{100}$ dollars, with interest, at six per centum per annum, from the 16th day of June, 1887, being the amount of taxes paid by him, and that
97 unless said sum is paid within twenty days said land be sold by J. M. Rose, as special master of this court, on a day to be fixed by him and at the front door of the building in which this court is held, on a credit of three months, for the purpose of raising the money to pay said sum. It is further ordered that the petitioner pay all the costs of this suit.

And now the petitioner in open court prays an appeal to the Supreme Court of the United States from this decree, which is granted.

And on April 11th, 1888, the following proceedings were had, to wit:

Come the said defendants, by John M. Harrell, Esq., their solicitor, and pay into the registry of the court the sum of one hundred and seventeen & $\frac{57}{100}$ dollars, being the amount of the redemption money required to be paid by the defendants to said plaintiff by the terms of the decree rendered in this court on the 9th day of April, 1888, with the clerk's poundage added thereto. It is
98 ordered that said sum, less the clerk's poundage, amounting to one dollar and sixteen cents, remain in the registry and be paid on demand to the said plaintiff or his attorneys of record or upon their order.

And on the hearing the following depositions and exhibits were introduced:

Deposition of Frances M. Barbour.

First. State your name, age, & place of residence.

Ans. My name is Francis M. Barbour; my age is 43 years; my residence, Carbondale, Ill.

Int. 2nd. State all you know of the second marriage of Frances

M. Barbour. Give dates and names in full, by whom performed, and append copy of marriage certificate or certificates, proving signatures to same by competent witnesses; what issue, if any, — said marriages, and age of children; if yet married.

Ans. I have been twice married. First to Franklin J. Munger, of Carbondale, Ill., Oct. 31, 1871, at Waukegan, Illinois,
99 Braynard Duffield officiating. A copy of marriage certificate is hereto appended, marked "A." Four children were the issue of this marriage—Howard P. Munger, 13 years old 17 May last; Grace E. Munger, 11 years old 25 Jan'y last; Robert P. Munger, 8 years old 26 last Nov'r; Chapin P. Munger, died Oct. 29, 1886, in the sixth year of his age; am now the wife of Ormond Barbour. My marriage with Mr. Barbour was on 3rd of April, 1884, at Saint Louis, at No. 2207 Olive street, Rev. Dr. Eddy, of Detroit, officiating; certificate lost. One child, the issue of this last-named marriage, was born 3rd Nov., 1885, and died June 29, 1886.

Int. 3. If more than one marriage, state when former husband died, whether he made a will, and what legacy or legacies were bequeathed or devised by him, and to whom.

Ans. Franklin P. Munger died Dec'r 21, 1881. He left no will.

Int. 4. If former husband's life was insured, state where, in what company, and for how much and nature of insurance; what sum was paid on his death, to whom, and who were the beneficiaries, nominal and real.

Ans. Mr. Munger's life was insured in two companies. In
100 the Northwestern Travelling Men's Association of Chicago, Illinois, for five thousand dollars, and in the Western Commercial Travellers' Association of St. Louis for twelve hundred dollars. The insurance was on the assessment plan in both instances. The insurance was payable to "Frances M. Munger, wife." The beneficiaries were the wife and children of the insured. The sum of six thousand two hundred dollars was paid to Frances M. Munger, the present witness. In receiving and acknowledging the insurance money witness did so for herself and children and not as her personal and individual funds.

Int. 5. State what you know about the purchase of lot 5, in block 140, of the city of Hot Springs, Arkansas, and the building and furniture thereon, constituting what was known formerly as the Clarendon Hotel. How much was paid in cash, to whom paid, by whom, and what money or moneys were so invested and when?

Ans. I know the property—lot 5, block 140, in Hot Springs, Ark.
It was purchased by me of Mrs. Emma Laley, of Yonkers,
101 N. Y. The purchase was made through my banker, R. H. Parks, of New York city. Cash payment was $4,000.00, Oct. 12, 1883. The money so paid on said property was part of the amount received on Mr. Munger's life insurance, except a small amount belonging to one of my children.

Int. 6. State ages and places of residence of Howard P. Munger, Grace E. Munger, Robert P. Munger, & whether — of them invested any money of their own personal means to make up said first

payment; if so, which of them and in what sum or sums and how you derived your information.

Ans. Howard P. Munger is 13, Grace E. Munger is 11, & Robert P. Munger is 8 years old. They all reside with me in Carbondale, Ills.

Ans. Howard P. Munger has on deposit at the same bank where I kept my account, of his own money, fifty dollars, which was by me put into the purchase of said property as an investment for him.

Int. 7. In what character did Mrs. Francis M. Barbour hold said property? If held in her name, who enjoys the rents and profits of the same?

102 Ans. I had the property in my own name and used it as a means of making a living for myself and children. Since my marriage to Mr. Barbour the property has been rented and my children have had their support from the means derived from the rent.

Int. 8. If taxes were paid on said property, state for what years paid, for what not paid, and state all the circumstances of their not being paid.

Ans. The taxes, as I supposed, were regularly paid. The taxes for 1883 were paid by me at Hot Springs; tax for 1884 were paid by my agent, W. W. Wiggs, who was authorized to pay insurance, taxes, & repairs, and to collect rent, which he did, rendering me monthly statements and rec'ts. The taxes for 1883 were $87.98; for 1884, $66.08, & special tax of $10, rec'ts of which were sent me with statement of taxes. Tax for 1885 were $105, then paid Wiggs & Ware, rec'ts forwarded as before. Taxes for 1886 were paid by Ware & Rockwood, $105, for which tax rec'pt was sent me. I have recently learned that the taxes on said property for 1884 were not fully

103 paid. I can give no special reason of them not being paid except the carelessness or oversight of my agent, W. W. Wiggs, for he always had the means in his hands to pay all the taxes.

Int. 9. Have applications and tenders been authorized to be made to redeem same from sale for non-payment of taxes; if so, to whom & when made?

Ans. They have. I wrote my agent-, Ware & Rockwood, as soon as I knew of this complication, instructing them to tender to R. W. Martin, of Little Rock, Ark., the sum of one hundred and eleven dollars and 95 cents, with 10 per cent. interest to date; that if he refuse to accept the tender to place same to his credit. The money was so tendered him; the exact date can be given by my said agents. My agents informed me that they made the tender first by mail; that it was returned to them, and that afterwards the tender was made by Mr. Ware in person.

Int. 10. Who is in possession of said property & when did the person or persons in possession enter thereon and how long held possession?

Ans. Mrs. M. E. Haynes is now in possession of said prop-

104 erty as my tenant and has so occupied said property since the 29th of March, 1885.

Int. 11. Who was W. W. Wiggs; where is he? And if, on settlement, he owes money on account of any employment of him, that you know, state what sum is so owing by him and on what account.

Ans. W. W. Wiggs was my agent. I don't know where he is now; have heard that he is in Mexico. He owes me some $20, on settlement. I have been informed that he is a large defaulter to others.

Int. 12. Are you directly or indirectly interested in this action? If interested, explain the interest you have.

Ans. I am, of course, interested in this suit. I consider the property as belonging to me and my children.

Int. 13. State anything you know concerning the subject of this action favorable to either party.

Ans. I was entirely ignorant of any claim of this property or of the omission to pay any part of taxes on same until 20 of June, 1887.

Cross-interrogatories:

105 First. From whom was the property purchased, and when?

Ans. From Mrs. Emma Laley, of Yonkers, N. Y., on 12 Oct., 1883.

Second. In whose name was the deed taken?

Ans. In name of Frances M. Munger.

Third. In whose name did the title appear of record at the time the taxes of 1884 was assessed and at the time of the forfeiture?

Ans. In name of Frances M. Munger.

Fourth. Have the public records ever shown that any minors had any interest in the property?

Ans. I presume not, as I never made any conveyance of it to my said children.

FRANCIS M. BARBOUR.

Endorsed: Filed Dec. 8, 1887. Ralph L. Goodrich, clerk.

Which Exhibit "A" is as follows:

Marriage Certificate.

STATE OF ILLINOIS, }
County of Lake. }

This certifies that Franklin J. Munger, of Carbondale, in the State of Illinois, and Miss Francis M. Parks, of Waukegan, in
106 the State of Illinois, were, at Waukegan, in said county, by me joined together in holy matrimony on the 31st day of October, in the year of our Lord one thousand eight hundred and seventy-one.

S. BRAINARD DUFFIELD,
Rector of Christ Church.

In presence of—
MRS. E. O. PARKS.
MR. & MRS. CAPIN PARKS.

STATE of ILLINOIS, } ss:
Jackson County, }

I, Isaac H. Caldwell, a notary public in and for said county, do certify that the foreg-ing is a true & correct copy of the original now before me.

Given under my hand and notarial seal Sept. 20, 1887.

I. H. CALDWELL,
Notary Public.

Deposition of Edward L. Reid for Respondents.

I am deputy clerk of Garland county, and as such legal custodian of the tax books of said county.

I produce the records of lands sold to the State for the taxes
107 of 1884. Lot 5, block 140, as platted on the U. S. reservation of Hot Springs, in said county, and in the city of Hot Springs, was sold to the State for the taxes of 1884 for $110.95, assessed as the property of Parks & Munger. It was sold on the 25th day of May, 1885. Its assessed value was $4,000. The city taxes of said year, amounting to $20, were included in the amount above stated, for which said lot was sold.

I produce the record of lands forfeited to the State in my office for said year 1884, situated in said county and city. Lot 5, block 140, valued at $4,000, is shown by said record to have been forfeited for taxes due as follows:

State tax	$2
School tax	8
Sinking fund	16
Insane asylum tax	2
General county	20
City of Hot Springs	20
District school	20
Total taxes, penalty, & costs	$110 95

There are no items stated on this record of the penalty & costs, but they are included in the sum total above named.

I am not certain that there was any certificate by the clerk
108 appended to the list of lands forfeited to the State for the taxes of 1884. I did not make out the list, but this is the record taken from the record of lands sold to the State May 25, 1885, and not redeemed within two years. My impression is that said list was sent to the commissioner of State lands on May 25 or 26th, 1887. The commissioner sent the list back for correction, holding, I think, that it was incomplete, as he supposed that Smith's Addition and South Hot Springs, which are not within the limits of the city of Hot Springs, were parts of said city; that was one reason assigned by the commissioner. The lots of Smith's Addition and South Hot Springs were never, to my knowledge, included in a list of forfeited lots of the city of Hot Springs sent to the land commissioner. The lots of said addition and South Hot Springs are outside the limits of

the Government reservation, and formed no part of the city. The list may have been returned by the commissioner within fourteen days. I do not know whether in the meantime any applica-
109 tions were made to purchase the lands through Mr. Moyston, the clerk.

I produce herewith the original assessment list of 1883, which by law is the assessment list of 1884. The oath to the assessment is the only oath that appears on the real-estate assessment list of said county for said year, and is as follows:

"I, De Soto Samuels, assessor, do solemnly swear that the foregoing is correct, and that I have appraised each tract or lot of land, except United States or State land, at its true value in money and not what it would bring at auction or at forced sale, so help me God.

D. SAMUELS, *Assessor.*

Sworn to and subscribed before me this 19th day of June, 1883.

[L. S.] Z. BELDIN, *Clerk.*"

There is no mark or date of filing said assessment list.

In placing lot 5, block 140, on the tax lists of 1885 and 1886, after the sale of the same to the State for non-payment of taxes of 1884, the clerk did what he was not authorized to do by mistake, I suppose. I find from said lists that it was so placed.

110 I know that the delinquent list of 1884 was published two weeks—that is to say, it was published twice. I saw both publications. We made a point to keep the papers. It was published twice, once on the 16th day of May, 1885, and the last on the 23rd day of May, 1885. I make the statement from the proof of publication on file in my office and from my own knowledge derived from the attention I gave to the publication at the time. There was no advertisement after the 23rd day of May.

Further deponent sayeth not.

EDWARD S. REID.

Deposition of John D. Ware for Respondents.

I am a member of the firm of Ware & Rockwood, real-estate agents in the city of Hot Springs. Mr. Rockwood entered the firm June 1, 1886. I had an associate up to about May 1, 1886, prior to the association with Rockwood. He was W. W. Wiggs. I do not know where he is now. He was the senior partner of the
111 firm, which was styled Wiggs & Ware. Wiggs ran away. The partnership was not formally dissolved. It was the 3rd or 4th of May, 1886, when he left, without notice to me, and I have not seen him since. I formed a partnership with him about the 1st of February, 1885. At the time I became connected with Wiggs he was the agent of Mrs. Frances Munger, now Mrs. Frances M. Barbour, to collect rents and pay taxes upon the property known as lot 5, block 140, Hot Springs, called the Haynes villa, used as a hotel or boarding-house, containing twenty rooms, and now kept by

Capt. Haynes & wife. They pay for it $100 per month rent. I am familiar with the value of property in this city, and should say the house and lot are worth seven or eight thousand dollars. It is considered a first-class boarding-house. It is on Park avenue, the second door from the Avenue Hotel and nearly opposite the Waverly. I am collecting the rents from the occupants for Mrs. Barbour. I think there was a balance due by Wiggs to Mrs. Munger at
112 the time he ran away, about $150.00. I think Wiggs had paid the taxes before on the real and personal property on said lots, and the firm of Wiggs & Ware paid afterwards on the same. I have seen letters from her requesting him to send her the tax receipts for taxes on said property. I cannot state the year now. I paid afterwards the taxes on said property, real and personal, for 1885 and 1886.

(Witness here produces tax receipts for the years 1885 & 1886, $105.50 and $96 respectively, which are not required by the parties to be exhibited herewith, and are acknowledged to be the original receipts.)

I stated to the collector that I wished to pay all the taxes on said property, and, upon his demand, paid as above, receipted for by him. When land is marked delinquent on the tax-list the collector requires parties paying taxes to go to the clerk. He did not request me to see the clerk nor notify me of the delinquency. I did not know that this lot had been returned delinquent for the taxes of 1884. I had no memorandum in my office indicating that
113 taxes for 1884 had not been paid. If I had known it I would have redeemed. Mrs. Munger supposed that the taxes had been paid. I am shown here the tax-lists of said county for 1885 and 1886, which are produced by the clerk, and find that said lot is listed for said years and marked paid. I paid the taxes of 1885 and 1886, and sent Mrs. Munger the receipts, which I supposed was all that was necessary, and I supposed that that was all the information of the payment of the taxes that she required, and that they had been regularly paid. I know the petitioner, R. W. Martin. He is a banker, I believe, living at Little Rock. He has made no investments in this county outside of his purchase from the State land commissioner, that I know of. I think his firm of Martin & Thompson have made loans here. Baxter & Hunt, real-estate & insurance agents, are their agents in this city. I have written Mr. Martin, offering to pay the amount of taxes, penalty, and costs. This was soon after I learned of the purchase—some two or three weeks afterwards. He declined to accept payment of the
114 money and still declines. He has incurred no expense in keeping up the property. $300 has been expended by Mrs. Munger in keeping up the property since Martin's purchase. This was necessary expense. I wish to say that if the collector had referred me to the clerk or in any other way notified me that the taxes of 1884 had not been paid when I took the receipts for the taxes of 1885 and 1886, I should have paid or redeemed at once.

Further deponent sayeth not.

JOHN D. WARE.

Deposition of W. H. Moyston.

Ans. to Int. first. I am circuit clerk and *ex officio* county clerk of Garland county, State of Arkansas. I was elected at the general election September, 1886; was commissioned and qualified October 30th, 1886. As to the records of my office relating to the forfeiture of lot 5, in block 140, of the city of Hot Springs, Garland Co.,
115 Arks., the assessment, tax-lists, and sheriff's return of delinquent land, advertisement, and sale for taxes were required to be done at dates which were prior to my election. I find in my office a list which is entitled "List of real estate assessed for taxation in Garland county, Arkansas, for the year 1883." It contains no file-mark or endorsement or date of filing. I do not know when or how it came into the office. There is nowhere endorsed upon said list, which is the only list purporting to be an assessment list of said year, to my knowledge, in my office, the oath of office of the assessor of said county, D. Samuels, required by sec. 5661 of Mansfield's Digest or of article 19, sec. 20, of the constitution of this State. The only oath I find on the list purporting to be the list of real estate assessed for taxation in Garland Co., Arks., for the year 1883 is the oath required by the statute to be appended to the assessment list of real estate required by sec. 5676, sworn to by D. Samuels, assessor, on the 19th day of June, 1883, before Z. Beldin, clerk, and another oath in a similar form on on the fly-leaf at the end of the book containing list afore-
116 said, but which is appended to another list following the list aforesaid, entitled "List of real estate assessed for taxation in Garland county for the year 1884," which last-mentioned list consists of four (4) pages, at the end of which is appended said oath of D. Samuels, assessor, as required by section 5676, dated and sworn to before Z. Beldin, clerk, June 2nd, 1884. It is proper to state that said supposed list for 1883 is not paged beyond page 134. There are six pages following said page 134 and preceeding the oath of D. Samuels to said list of 1883, the first of which is blank; the second page contains a table of figures purporting to be an assessment in the name of the Hot Springs R. R. Co.; third and fourth pages purport to be "A recapitulation;" the fifth and sixth pages blank. The seventh and last page of said list of 1883 contains the said oath of D. Samuels, sworn to on the 19th day of June, 1883, before Z. Beldin, clerk, and sealed with the seal of said county circuit court. The oath of D. Samuels, assessor, on the fly-leaf before mentioned, at end of list for 1884, dated June 2, 1884, has no seal appended, but it is
117 evident that a leaf, of two pages at least, has been torn out of said list for 1883, between the two blank pages not paged and referred to herein as 5th & 6th pages next preceeding the oath of D. Samuels, assessor, sworn to June 19th, 1883, which torn leaf was part of the sheet on which said last-mentioned oath appears, but which leaf remaining, though loose, is attached to the stitching in a manner to show that said last-mentioned leaf has never been removed. How many other leaves have been removed there is no means of

knowing. No fly-leaf or page of the book constituting said list of assessor for 1863 is missing preceeding page 134. There is no record in my office, that I am aware of, to show when the assessor of Garland county made his return to this office of the amount, description, and value of real property subject to be listed for taxation required in sec. 5676 of Mansfield's Digest. The certificate of publication of the list and notice of delinquent lands in Garland county for
118 sale at delinquent tax sale for the year 1884, remaining in my office, contains lot 5, in block 140, city of Hot Springs, in the Weekly Sentinel newspaper of its issue Saturday, May 23rd, 1885, which certificate of publication is as follows:

STATE OF ARKANSAS, }
County of Garland, } ss:

I, Ellis Woolman, do solemnly swear that I am the publisher of the Weekly Sentinel, a weekly newspaper printed and published in Garland county, State of Arkansas; that I was such publisher at and during the publication of the annexed legal advertisement and at the dates of the several publications of said advertisement hereinafter stated, and that during said periods and at said dates said newspaper was printed and had a *bona fide* circulation in said county; that said newspaper had been regularly printed and published in said county and had a *bona fide* circulation therein for the period of one month next before the date of the first publication of said
119 advertisement, and that said advertisement was published in the regular weekly issues of said newspaper once a week for two consecutive weeks. The first publication thereof had been made on the 16th day of May, 1885, and the last on the 23rd day of May, 1885.

ELLIS WOOLMAN.

Subscribed and sworn to before me this 9th day of November, 1887.

W. H. MOYSTON, *Clerk.*

And there is no certificate or other evidence of the publication of said list in my office. Whether the clerk attended the sale or not I cannot say.

Ans. to Intg. 2nd. I know Chas. Garratt and that he and J. P. Millard applied to the commissioner of State land after said lot had been certified to said comm'r as forfeited to purchase from said commissioner lots of the city of Hot Springs so forfeited, through me, by checks and money order to said commissioner of State land, Paul M. Cobbs. Their combined applications embraced a large number of lots in said city forfeited for non-payment of taxes for
120 1884, embraced in said certificate. The commissioner returned said money, but I think he kept the applications. He wrote me the following letter:

STATE OF ARKANSAS:

[SEAL.] Office of commissioner of State lands. Paul M. Cobbs, commissioner; Chas. B. Myers, deputy com'r.

LITTLE ROCK, *June 7th*, 1887.

W. H. Moyston, clerk, Hot Springs, Ark.

DEAR SIR: Enclosed I return you list of lands forfeited for 1884 for correction. You fail to state in giving the township, range, whether they are north or south of the base line. Please give the area of each tract as shown by your books. Smith's Addition should be on the town-lot sheet and the taxes regularly extended on each tract as you have the other town lots; and state to what town it belongs. You also omitted putting your seal to the certificate as recorder. Please write "circuit" clerk as indicated by pencil mark after your signature to last-named certificate. I also return you the letter and check of Mr. John D. Ware, which you can send
121 back with the list as corrected. I cannot entertain an application to purchase until the list is properly made and filed in this office. Hoping to receive the list again soon, I am,

Yours truly, P. M. COBBS, *Com'r.*
M.

I know each of said applicants personally. None of the applications, to the best of my knowledge, contained any land but city lots, described as lots & blocks, in the city of Hot Springs, and not described by numbers, as sec., township, & range. Smith's Addition was not necessary to be in my certificate, as it is no part of the city of Hot Springs. In the lists of country lands contained in my certificate I gave the area and numbers of each as on the tax-list from which I took them. I may have omitted my seal, but the applications might have been entertained and my certificate amended by adding the seal, as was done by me immediately on receipt of commissioner's letter, returning my certificate copied above. The applications to purchase were renewed by the parties. I saw the letter from the commissioner to Chas. Garratt in reply to his application, stating that all the lots he had applied for had been sold
122 with the exception of one or two, which he, Garratt, found belonged to minor heirs. That letter Mr. Garratt informed me he had destroyed.

Ans. Int. 3rd. This interrogatory I have answered in my answer to the first intg.

Ans. Int. 4th. I answered this in my second answer.

Ans. Int. 5th. John D. Ware and J. P. Millard were the only real-estate agents that applied that I remember.

Ans. Int. 6th. I don't know anything more than already stated by me herein. I have no interest in this controversy.

W. H. MOYSTON,
Clerk Circuit Court, Garland County, Arks.

Endorsed: Opened and published by order of court February 10, 1888. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

123 *Deposition of Robert Parks.*

In Garland Circuit C't.

R. W. MARTIN, *ex Parte.*

STATE OF NEW YORK, *New York City and County,* } *ss:*

The deposition of Robert H. Parks, of the city and State of New York, taken at the office of Charles Edgar Mills, notary public, at No. 74 Broadway, in the city of New York and State of New York, between the hours of 8 o'clock a. m. and 6 o'clock p. m. on this 22nd day of September, A. D. 1887, to be read as evidence in the above-entitled proceeding on the part of Ormond Barbour, as the next friend of Frances M. Barbour, Howard P. Munger, Grace E. Munger, and Robert P. Munger, said proceedings pending in the Garland circuit court.

ROBERT H. PARKS, being by me first duly sworn that the evidence he should give in the above-entitled proceeding should be
124 the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories propounded to him doth depose and say as follows:

Interrogatories.

First. State your name, age, and place of residence.

Answer. My name is Robert H. Parks; age, 51 years. I reside in the city of New York.

Second. State what you know of the marriage or marriages of Francis M. Munger Barbour, name of husband or husbands, children born, age of children, name of father of children, where she now lives, whether married or single, and where children reside.

Answer. Francis M. Munger married Franklin J. Munger about the year 1872. She was married afterwards to Ormond Barbour in the year 1884, I think it was.

Her first husband died on Christmas Day, 1881 or 1882.
125 Howard P. Munger was the first child and was born about two years after the first marriage.

Grace E. Munger, the second child, was born about one year and a half later. Robert P. Munger was the third child, born one year and a half later. These are all the children now living of Franklin J. Munger and Mrs. Francis M. Munger.

Francis M. Munger is my sister. They had one more child, a younger boy, named Chapin Munger, who died about a year and a half ago. Francis M. Munger, now Mrs. Barbour, resides with her husband, Ormond Barbour, at Carbondale, Illinois, together with her living children.

Third. State what you know of sale to her of lot 5, block 140, city

of Hot Springs, Arkansas, known formerly as "Clarendon Hotel," out of what fund, if any particular one, said purchase was
126 made, how derived, if you know, stating names and dates in full.

Answer. I negotiated the purchase of the Clarendon Hotel property at Hot Springs, Arkansas, under a power of attorney given to me by my sister, Francis M. Munger. The contract for the purchase of this property was dated June 4th, 1883, and the purchase was completed some five or six months later. Franklin J. Munger's life was insured for five thousand dollars for the benefit of his children. The proceeds of this life insurance was deposited with the firm of R. H. Parks & Co., of which firm I was a member, pending the negotiations for this property, and I paid this life-insurance money to Emma Layley for the Clarendon Hotel property, subject to a mortgage of seven thousand five hundred dollars, I believe.

127 Fourth. If you knew Franklin J. Munger state what vocation he followed, when and where he died, and whether he left any children. If so, how provided for by him.

Answer. I knew Franklin J. Munger. He was a commercial salesman. He travelled for different mercantile houses. He died at Abilene, State of Kansas, Christmas Day, 1881 or 1882. He left four children—Howard P. Munger, Grace E. Munger, Robert P. Munger, and Chapin Munger. The latter child died about a year and a half ago. They were provided for by the insurance upon his life for five thousand dollars.

Fifth. State, if you know, under what circumstance the failure to pay taxes on said house and lot occurred.

Answer. I only know from my sister informing me that she had sent the money to Hot Springs to an agent, who ran away and failed to pay the taxes.

Sixth. Are you, directly or indirectly, interested in this action? If interested, explain the interest you have.

Answer. I have no interest, except the natural affection I bear to my sister and her children.

Seventh. State anything you know concerning the subject of this action favorable to either party.

127*a* Answer. I always understood that this money so received from the life-insurance money was intended by Mr. Munger to be invested solely for the benefit of the children, and my sister after the death of her husband always treated this money, both in conversation and correspondence, as the children's money, to be used solely for their support and benefit and education.

ROBERT H. PARKS.

Deposition of James E. Chandler.

First Interrogatory. State your name, age, and place of residence.

128 —. My name is James E. Chandler; age, 42 years; I reside in the city of New York.

Second Interrogatory. State what you know of the marriage or marriages of Francis M. Munger Barbour, name of husband or husbands, children born, age of children, where she now lives, whether married or single, and where children —.

Answer. I am unacquainted with the family relations of Mrs. Munger.

Third Interrogatory. State what you know of sale to her of lot 5, block 140, city of Hot Springs, Arkansas, known formerly as "Clarendon Hotel," out of what fund, if any particular one, said purchase was made, how derived, if you know, stating names and dates in full.

Answer. I prepared the papers, consisting of power of attor-
129 ney from Mrs. Munger to Robert H. Parks, the deed, and the mortgage, used in carrying through the transaction. I carried on considerable correspondence with Mrs. Munger and with Mr. John M. Harrell, of Hot Springs, concerning the titles of the property and other matters connected with the transaction. The property was bought by a fund realized from certain life insurance held by Mrs. Munger's husband, Franklin J. Munger.

Shortly after Mr. Munger's death I visited Abilene, Kansas, to confer with Mrs. Munger about her husband's affairs. I then understood from Mrs. Munger and others conversant with Mrs. Munger's affairs that outside of the insurance on his life Mr. Munger would have but little to leave to his children. Mrs. Munger, at this
130 visit, informed me that she relied largely, if not almost entirely, on her husband's life insurance to support and educate their children.

This life insurance, when collected, was transmitted to Mr. Parks, and was on deposit with him or his firm at the making of the contract for the purchase of this property at Hot Springs.

The contract for the purchase of the property is dated June 4th, 1883. It runs from Emma Laley to Frances M. Munger. The deed was delivered some time in the fall of that year. I cannot give the exact date.

Fourth Interrogatory. If you know Franklin J. Munger state what vocation he followed, when and where he died, and whether he left any children; if so, how provided for by him.

Answer. I never knew Franklin J. Munger.

131 Fifth Interrogatory. State, if you know, under what circumstances the failure to pay taxes on said lot & house occurred.

Answer. I have no knowledge of these circumstances.

Sixth Interrogatory. Are you directly or indirectly interested in this action? If interested, explain the interest you have.

Answer. I am not directly or indirectly interested.

Seventh Interrogatory. State everything you know concerning the subject of this action favorable to either party.

Answer. I have stated all that I know.

JAMES E. CHANDLER.

(Endorsed:) Filed Dec. 8th, 1887. Ralph L. Goodrich, clerk.

132 *Deposition of Charles H. Hinman.*

My name is Charles H. Hinman; I am secretary & treasurer of the Northwestern Travelling Men's Association of Chicago. This association was organized in July, 1876, under laws of Illinois. The objects of the association are to bring about a better acquaintance of the several persons engaged as travelling men and the adoption and maintenance of such plan as shall tend to the mutual benefit and protection of its several members, and also to secure pecuniary aid to the widows, orphans, heirs, and devisees of deceased members of said association." The domicil of said association is room 3, No. 69 Deaborne street, Chicago, Illinois. Franklin J. Munger was a member of said association. He was admitted to said association May 3rd, 1879, and, according to proofs of death, committed suicide December 26th, 1881. The beneficiary in his application for membership was Frances M. Munger, named and described in such application as his wife; and the said beneficiary was paid
133 $5,000 on March 25th, 1882, by check on 5th National Bank of Chicago. I know nothing of the real or nominal beneficiary of said Franklin J. Munger, except from our books. Frances J. Munger's receipt for said $5.000, as such beneficiary in the case of Franklin J. Munger, is on the back of the certificate of membership of said Franklin J. Munger, deceased, and reads as follows:

"ABILENE, KANSAS, *March* 30, 1882.

"Received Northwestern Travelling Men's Association of Chicago, Illinois, five thousand ($5,000) dollars, in full of all demands under the within certificate of membership of Franklin J. Munger, deceased, No. 2130.

"MRS. FRANCES M. MUNGER,
"*Beneficiary.*

"Witness:
"W. C. HARLEY.
"FRANK M. FORAKER."

The original receipt we cannot part with, and the above is a true copy of the same.

To the second interrogatory. I answer that I have no interest whatever in the subject of this action.

134 To the third interrogatory. I answer that I know nothing of the action whatever, either for or against either or any of the parties interested therein.

CHARLES H. HINMAN.

Endorsed: Filed December 8, 1887. Ralph L. Goodrich, clerk.

135 The deposition of Edward L. Reid, taken on 22nd February, 1888, between the hours of 8 a. m. and 6 p. m., at the office of county clerk of Garland county, Arkansas, to be read as evidence in the action between R. W. Martin, petitioner, and O. Barbour and other respondents, and also in the action between R. W. Martin, petitioner, and H. A. Ballentine, respondent, pending in the United States circuit court for the eastern district of Arkansas.

Answer to interrogatory first. Edward L. Reid; age, 31 years; Hot Springs, Ark.; deputy circuit and county clerk of Garland county.

Answer to interrogatory second. I find that on the 5th day of June, 1875, in record of county court, volume A, page 220, of the county court of Garland county, there was entered an order as follows:

136 In the Matter of Incorporation of the Town of Hot Springs.

The court, having duly considered the matter of incorporation of the town of Hot Springs and having carefully examined the authorities touching the matter and things therein involved, is of the opinion that the prayer of the petitioners should be granted. It is therefore considered and ordered by the court that the petition be, and is hereby, granted, and that the town of Hot Springs, including the territory embraced in said petition, be organized as a body corporate in all respects, as prayed for in said petition.

And also in the same volume, on page 344, of date February 14th, 1876, the following order of said court appears, as follows:

Matter of Incorporation of the Town of Hot Springs, Garland Co., Arkansas.

137 Comes James B. Wood, Esq., and presents the petition of a number of citizens of said town to incorporate said town; which petition being examined by the court, the same is ordered to be filed; and it is further ordered that the same be set for hearing on the 16th day of March, 1876; and it is further ordered that said petitioners give notice as required by law.

And also in the same volume, page 359, of date April 4th, 1876, a certain other order of said court appears as follows:

In the Matter of the Petition to Incorporate the Town of Hot Springs.

It appearing from the record that the decision in this cause was not rendered on the 21st day of March, 1876, nor on the 28th day of March, 1876, and that this record showed that said decission
138 was withheld from said 21st day of March, 1876, and continued until said 28th day of March, 1876, and again withheld on said 28th day of March and continued until 3rd day of April, the court in course, it is therefore now ordered for then that

the records show that the decision in said matter was withheld on said 21st day of March, 1876, and continued until 28th day of March, 1876, and again withheld on said 28th day of March, 1876, and continued until the court in course.

And also in the same volume, page 360, of date April 5th, 1876, a certain other order of said court appears as follows:

In the Matter of the Petition for the Incorporation of the Town of Hot Springs.

Now, on this day, this matter having been presented to the court and fully considered, and having found that the petition con-
139 tains all the necessary requirements for the incorporation and organization of an incorporated town, and being satisfied that the territory described in said petition is not embraced within the limits of any city or incorporated town, and that said petition has been signed by a majority of the legal voters residing within the territory described in said petition, said majority exceeding in number 20 qualified voters, as required by law; that the territory set out in said petition is accurately described, and that the map or plat annexed to said petition is an accurate map or plat thereof, which said map or plat embraces the land described in the said petition as aforesaid, and that the name proposes in said petition for said town, to wit, Hot Springs, is proper and sufficient to distinguish it
140 from others of like kind in the State, and it being deemed right and proper, in the judgment and discretion of this court, that the prayer of said petition be granted and that the said territory be organized into an incorporated town as prayed for, to wit, "Hot Springs":

Is is therefore ordered and adjudged that the incorporated town as named and described in said petition be organized for general purposes as required by law.

To this order of the court Rector and Davies, attorneys for Henry M. Rector, contestant, excepts.

And also in the same volume, page 361, of date April 6th, 1876, a certain other order of said court appears as follows:

In the Matter of the Petition for the Incorporation of the Town of Hot Springs, Ark.

Comes the petitioners, by their attorneys, A. Curl, P. J.
141 Galvin, and J. B. Wood, and Henry M. Rector, contestant, by Rector and Davies, his attorneys, and contestant, by his said attorneys, files his motion for a new trial herein; whereupon said petitioners, by their said attorneys, file their motion to strike out contestant's motion for a new trial, which motion of petitioners being argued is by the court sustained, and it is ordered by the court that said contestant's motion be stricken from the files; to which ruling and judgment of the court in striking out contestant's motion for a new trial attorneys for contestant at the time excepted, and said

contestant moved the court for an appeal to the circuit court, which motion is overruled by the court; to which ruling of the court the contestant, by his attorneys, at the time excepted.

142 And also on pages 265 to 272, inclusive, of volume B of records of deeds and mortgages of said county I find recorded in full the petition of qualified voters of the territory to be incorporated, the map of the territory to be incorporated, notice of application for an order to incorporate the town of Hot Springs, with endorsements and filing of the same, and order of the county court therein dated April 5th, 1876, which, as it appears so recorded in regular order, — as follows:

Garland County Court.

To the hon. the county court of Garland county, in the State of Arkansas:

The undersigned, your petitioners, would respectfully show that they are citizens and voters of Garland county, in the State of Arkansas, and inhabitants of that portion of said county known as the town of Hot Springs; that they are not embraced within the
143 limits of any city or incorporated town; that there are about five hundred resident citizens and voters within the territory described below, and that they desire to be organized into an incorporated town to be known and styled as "Hot Springs;" that the territory which they propose and desire to have embraced within said corporate limits is described and bounded as follows, to wit: Beginning on the south line of the Hot Springs reservation, at the center of section (5), in township (3) south, of range 19 west, run thence north parallel with the United States land survey to the quarter-section corner on the south side of section 29, in township 2 south, of range 19 west; thence on line between section 29 and 32 to the southwest corner of the southeast quarter of the southeast quarter of section 29, township 2 south, of range 19 west; thence north by east to the center of section 28, in township 2 south,
144 of range 19 west; thence south parallel with United States land survey to the center of section 33, in township 2 south, of range 19 west; thence south by east to the southeast corner of the southwest quarter of the southeast quarter of section 33, in township 2 south, of range 19 west; thence south parallel with the United States land survey to the southeast corner of the southwest quarter of the northeast quarter of section 4, in township 3 south, of range 19 west; thence west along the south line of the Hot Springs reservation parallel with the United States land survey to the center of section 5, in township 3 south, of range 19 west, — the place of beginning, said tract embracing one thousand two hundred (1,200) acres of land.

That they deem it absolutely necessary for the mutual pro-
145 tection and benefit of the public living within the limits of said territory and for the proper enforcement of good order therein that they be organized into an incorporated town to be gov-

erned by municipal laws and regulations; that your petitioners annex hereto a correct map or plat of the said territory, marked Exhibit "A," to which all necessary reference is prayed.

Your petitioners would further represent and show unto your honor that, owing to the peculiar locality of our town and the present condition of a greater portion of the business part thereof, the public health has been and is greatly in danger for want and in the total absence of proper sanitary measures, and — will be deterred from visiting our town; and this can only be remedied effectually by municipal laws.

Your petitioners would also state and show unto your honor
146 that our community or town is now being flooded with lewd and immoral characters, who infest our street- day and night, and by their obscene carriage and vulgar language render it absolutely disagreeable for persons of respectability to be on the streets, and more especially so on the Holy Sabbath, on account of which many on that day are deprived of the privilege of attending the services of the various churches; and that your petitioners believe that this state of facts will prove very detrimental, if not to our morals in fact at home, to our moral reputation abroad. Your petitioners would state that while they commend the diligence and perseverance of our county and township officers in doing all that could be done under existing circumstances to enforce good order and correct these evils, they have been powerless to do so under the
147 general laws of the State and in the absence of municipal regulations.

Your petitioners state that A. Cure, Jas. B. Wood, and P. J. Galvin are authorized to act in behalf of petitioners in presenting this their petition.

Wherefore, the premises considered, your petitioners pray that they may be allowed to organize themselves into an incorporated town according to the statutes of the State of Arkansas in such cases made and provided, embracing the territory above described, and to this end they do and will ever most earnestly pray.

H. Cohn.	J. L. B. Carver.	John Valentine Buxom.
Sam. E. Rigg.	John Gillen.	J. S. Davis.
A. W. Hobson.	Wiley Clayton.	James Floyd.
J. C. Stanton.	Dan. Hill.	Ned Chambers.
J. M. Huffman.	Geo. Turner.	Mike Conley.
Patsy Dugan.	G. L. Lanier.	Gus. Putes.
John Brooker.	Wm. Lovie.	—— Cathmore.
Henry Quinn.	U. M. Woolman.	Dan. Smith.
W. J. Moore.	J. T. Mulholon.	Abe Peters.
148		
L. D. Law.	G. C. Keobler.	Henry Alexander.
E. B. Hotchkiss.	J. H. Nichols.	John Williams.
J. C. Huddleston.	J. N. Clyde.	Henry Ellis.
D. B. Weiss.	Frank Tilles.	Andrew McClure.

Jas. H. Thale.
Henry Brantley.
W. H. James.
James R. Rutherford.
S. Ludlow.
Wm. Davis.
N. H. Cloyes.
C. Dewley.
Thos. Hart.
J. M. Green.
B. W. Darby.
Jeremiah Fenton.
S. Goldsmit.
J. F. Parker.
J. H. Sells.
W. A. Sevie.
E. W. Schuck.
Jonathan Werk.
Beef Dawson.
W. A. Bell.
Aaron Golden.
Henry Bottles.
Jas. Williams.
149 J. N. Acree.
E. Roe.
W. D. Axford.
Wm. F. Weeland.
John Polk.
Gus. Polk.
Geo. Bryan.
Henry Honey.
Geo. Cald.
Sam. Haywood.
Geo. Wright.
Jack Woods.
Geo. Wesson.
Geo. Mulbaby.
F. Smith.
Cos. Murphy.
Geo. Gray.
R. Baker.
Chas. Murphy.
Henry Robinson.
Ennis Writin.
J. Mendenhall.
Geo. Baker.
Aston Tall.
Wm. King.
Dick Hill.
F. Keetion.
150 Geo. Munroe.

H. L. Murrey.
E. B. Granger.
A. E. Erkhart.
J. P. Maguire.
E. H. Wilson.
J. J. Gillis.
Wm. Davis.
M. M. Woolman.
W. A. Kirk.
J. A. Gilford.
Henry White.
James Nast.
Jim Thompson.
John Jones.
A. Robinson.
Calvin Davies.
John Henderson.
C. N. Smith.
Sam. R. Gover.
J. W. Mayweather.
Dan. Rawlins.
Adam Roon.
Sam. Page.
Frank Treadwell.
J. Evans.
J. Spears.
F. Reed.
W. H. Coffrey.
J. Douglas.
Thomas Franklin.
Wm. Brossel.
Alfred Kilemory.
Peter McGrath.
R. B. Runyon.
J. W. Parker.
Green Cross.
W. M. Toole.
Maurice Pequoett.
Albert Mann.
Hugh Price.
C. G. Bush.
H. P. Thomas.
Jas. Maler.
Phil. Davis.
Geo. Simpson.
John Carter.
A. W. De Base.
James Hall.
Andrew Green.
Sam. Newlin.
S. B. Wood.

Geo. Johnson.
John D. Miller.
John Armstrong.
John M. Conner.
R. Wilson.
Monroe Wilson.
Wilson McAdo.
Geo. Henerman.
J. Garner.
Gus. Matthews.
Shad. Misel.
Jack Matthews.
Geo. Thatcher.
R. A. Price.
John Harris.
S. H. Ham.
Musgrove Pucket.
Abe Clark.
Alex. Martin.
Levi Law.
George Grey.
Wm. Mellender.
Sam. Smith.
W. H. Lipscomb.
Jas. Porter.
H. Thompson.
Wm. Steel.
Levi Thomas.
W. A. Bates.
Jas. Nast.
John Benson.
Wm. Cotton.
Silas Mitchell.
R. Thowrozen.
J. T. Senter.
J. S. Watkins.
Thos. R. Thornton.
W. F. Clyde.
C. E. Frink.
Geo. W. Falk.
Richard Johnson.
Levi H. Turner.
Edwin Price.
H. J. Rogers.
Albert Donnelly.
Harry Brice.
Dan. McMichael.
J. B. Boss.
Wm. Codie.
J. W. James.
Chas. Weisp.

C. P. Cofford.
Peter Henderson.
John Alexander.
Sam. Brooks.
Geo. Wilson.
Wilson Taylor.
Albert Wilson.
David Garnier.
Chas. Menearth.
John Harris.
Jos. Harris.
J. C. Davis.
N. S. Jones.
Felix Favourx.
Ike Jones.
James Harrison.
Louis Buchanan.
Andy Jones.
Thos. Webber.
N. W. Fork.
E. B. Sweet.
Thos. H. Lewis.
G. W. Brown.
Dennis Watts.
F. W. Lynch.
Aaron Johnson.

B. F. Burden.
J. W. Jones.
Haney Ware.
Chas. F. Vatterlin.
Geo. Mencur.
G. W. Kesler.
A. G. Davis.
Harrison, Mary.
W. Staats.
Gabe Hays.
Henry Harvey.
Maj. Thompson.
Jas. J. Mott.
H. F. Crise.
Mike Waldron.
S. Stephenson.
Jack Matthews.
J. H. Withers.
Edw'd Arenitte.
Henry Hoekill.
W. P. Harrison.
Louis Buskin.
R. R. Bronson.
Joe Reed.
J. C. Trammel.
Wm. Miller.

John Dodson.
John Reardon.
H. Brown.
Mr. Sonora.
Geo. Belding.
John L. Miller.
Jasper N. Seward.
Wm. Cuist.
Ten. Waters.
Melvin Prince.
Wash. Howard.
Pete Alexander.
Loudon Walker.
Austin Haines.
W. H. Barry, M. D.
C. C. Greenway, M. D.
A. S. Garnett, M. D.
L. S. Ordway, M. D.
J. C. Biglow, M. D.
O. A. Hobson, M. D.
L. Stern, M. D.
E. A. Sheppey, M. D.
S. W. Vaughn, M. D.
G. H. Smith, M. D.
H. P. Smith, M. D.
Drake McDowell, M. D.

151

A. Reepbles.
W. Ennborough.
John E. Beitler.
John W. McCloud.
Wm. H. Lewis.
Allen Roan.
Chas. L. Allen.
Henry Jones.
Green Payne.
Charley Wilson.
Louis Strous.
Lee Greenbeaf.
W. F. Floyd.
W. F. Lancey.
David Johnson.
L. D. Dawson.
R. L. Adams.
E. F. Lee.
Louis Williams.

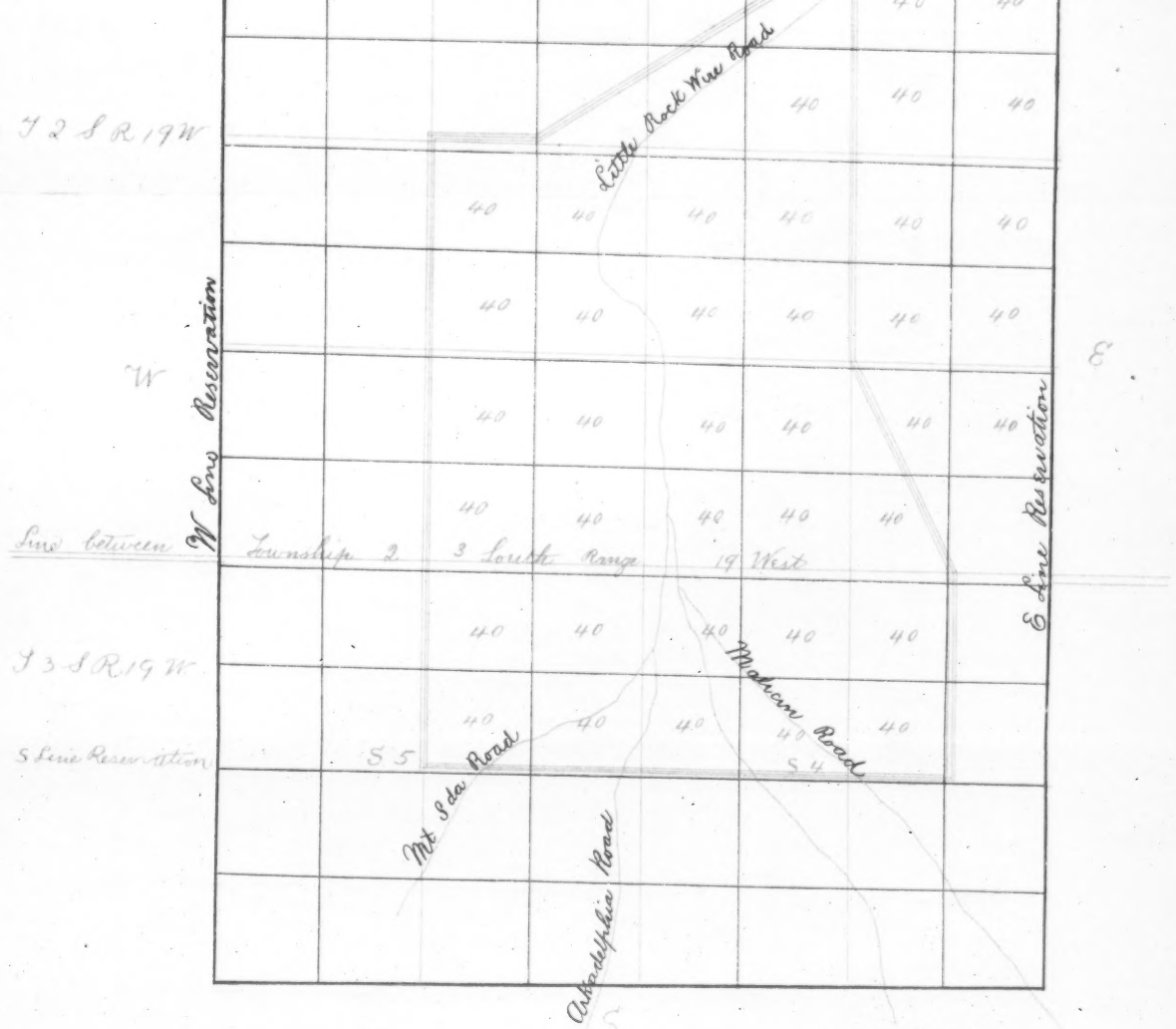
E. M. McDonald.
Ned Dummegan.

A. J. Smith.
C. W. Sage.
J. T. Cleghorn.
John Broodneric.
Franklin White.
H. F. Bolt.
John Sammons.
Michael Waldron.
Joseph Cook.
Sidney Grant.
C. S. Louer.
G. W. Brown.
John Lick.
H. J. Cochron.
Jas. Tyler.
Henry Patton.
John P. Evans.
Eph. Williams.
Geo. W. Laurence, M. D.
J. O. Fox, M. D.
P. H. Ellsworth, M. D.

T. B. Buchanan, M. D.
F. F. Linde, dentist.
W. B. Hopkins.
J. W. Clory.
J. C. Norris.
J. L. Bowers.
L. Thale.
M. Blockbouer.
Thos. Welch.
E. M. McConnishee.
L. Lawrence.
Finley & Brothers.
J. T. Brumley.
Josey Brumley.
Aaron Smith.
Johnathan Brantley.
Jam. F. Smith.
Bell & Booth.
L. C. Young.

David Allen & Co.
John Graham.

J. W. Demby.	S. W. Franklin, M. D.	H. Moscowitz.
Joe Thompson.	J. W. Cole, M. D.	M. Moscavitz.
Clem. Perkins.	T. J. Reed, "	A. Salinsky.
John B. Broddie.	J. S. White, "	N. Blannston.
M. Reederief.	J. B. Brooks, "	J. Mayer.
S. Underwood.	John D. Ware & Co.	V. R. Mason.
152 H. Rousher.	Geo. W. Baxter.	R. S. Wilkes.
J. L. Austin.	Cobington & Co.	John L. Shuster.
Wm. H. Gaines.	N. Cohn.	J. N. Murry.
J. B. McCaffrey.	Burr and Geary.	W. J. Wagner.
S. H. Furguson.	J. F. Ritchie.	S. W. Allen.
Carpenter & Richardson.	Chris. Hagen.	W. J. McTague.
S. C. Law.	F. Schlicker.	S. C. Bowling.
A. W. B. Reed, clerk circ't.	W. J. Newsome.	J. R. Hobson.
J. B. Heronsmoves.	Geo. Holcomb.	Jas. G. Allen.
R. F. Parker.	W. J. Chillis.	E. Lyon.
A. J. Parker.	O. D. Smith & Co.	H. Haythornwhite.
R. T. Justus.	P. A. Castle.	H. James.
H. W. Hoynes.	Geo. D. Bumpas.	W. J. Littlee.
Louis Bertsch.	Philip Helfrich.	B. Brown & Co.
J. Korotopsky.	Emanuel Wolf.	R. C. Higginsworth.
R. E. Allen.	C. N. Rocofellow.	J. W. Tucker.
Geo. Sadler.	J. W. Bloke.	Wm. Baird.
Leo Meyer.	Chas. Newton.	J. M. Woods.
Fred. Colbery.	S. Lemly.	N. D. Alley.
Julius Bute.	M. Shea.	W. F. Housley & Co.
Frank Place.	J. G. Colburn.	J. Kempner.
R. B. Clyde.	C. C. McClish.	H. F. Ray.
Thos. Bass.	Chas. F. Vatterlin.	Fones Bros. & Co.
A. Wakelin.	E. G. Smith.	L. D. Beldin.
Wm. Cooper.	Lee March.	R. S. Melton.
Martin Hoach.	Wm. P. Blake.	Andrew Bruon.
A. Braunn.	M. T. Morgan.	E. O. Gibbon.
153		
Wm. Staats.	D. C. Tuttle.	W. P. Walsh.
Kimble & Kimble.	J. Leon Fourner.	J. F. Kennedy.
C. R. Guinn.	E. B. Smith.	W. H. Douglas.
J. W. Corbort.	A. M. Cayne.	J. M. Spence.
James Reddell.	J. J. Monroe.	E. W. Beatie.
C. S. Williamson.	V. Vanansdale.	N. Hall.
C. B. Linn.	J. W. Ritchie.	Chas. Branner.
L. G. Robins.	J. L. Buttlerfield.	Sam. Ouattlebaum.
Joseph Molin.	J. Griffith.	F. W. Joy.
Smith Scroggins.	F. S. Butterfield.	W. W. Waters.
J. H. Scroggins.	S. R. Good.	
Chas. Rutherford.	A. G. Davies.	
W. A. Wadlington.	P. J. Galvin.	
A. Curl.	Geo. W. Richard.	
James B. Wood.		



Section lines thus _____

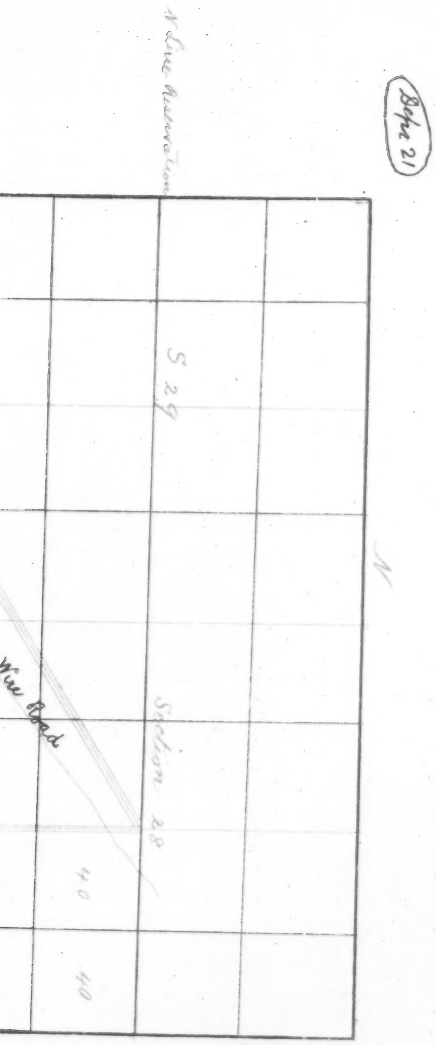
Subdivision lines thus ____ _____

Corporation line thus ═══

No. 369.
Martin
v.
Barbour
} p. 154

Carl

154



STATE OF ARKANSAS, }
County of Garland. }

I, W. A. Kirk, do solemnly swear that the facts set forth in the above and for-going petition are true to the best of my knowledge and relief.

W. A. KIRK.

Sworn to and subscribed before me this 16th day of March, 1876.

J. W. JORDAN,
County Judge.

(Here follows diagram marked p. 154.)

155 *Notice of Application for an Order to Incorporate the Town of Hot Springs.*

Notice is hereby given that on the 14th day of February, 1876, application by petition in writing, signed by 467 persons, was made to the county court of Garland county for an order authorizing the incorporation of the town of Hot Springs. Said petition states in substance that petitioners desire to be organized into an incorporated town to be known and styled as the town of "Hot Springs," embracing the following-described territory, to wit: Beginning on the south line of the Hot Springs reservation, at the center of section 5, in township 3 south, of range 19 west, running thence north parallel with United States land survey to the quarter-section corner on the south side of section 29, in township 2 south, of
156 range 19 west; thence on line between section- 29 and 32 to the southwest corner of southeast quarter of section 29, township 2 south, of range 19 west; thence north by east to the center of section 28, in township 2 south, of range 19 west; thence south parallel with United States land survey to the center of section 33, in township 2 south, of range 19 west; thence south by east to the southeast corner of the southwest quarter of the southeast quarter of section 33, in township 2 south, of range 19 west; thence south parallel with the United States land survey to the southeast corner of the southwest quarter of the northeast quarter of section 4, in township 3 south, of range 19 west; thence west along the south line of the Hot Springs reservation parallel with the United States land survey to the center of section 5, in township 3 south, of
157 range 19 west, the place of beginning, said tract embracing twelve hundred acres; that the petitioners are qualified voters of Garland county, Arkansas, and inhabitants of said territory; that they are not embraced within the limits of any city or incorporated town; that A. Curl, P. J. Galvin, and Jas. B. Wood are authorized to act for the petitioners in the prosecution of said petition, and that it is necessary for the proper enforcement of the law and order within said limits and for the health of those living thereon that they are governed, so far as can be, by municipal laws, and that said petition was set for hearing by said county court on

the 16th day of March, 1876, at 10 o'clock a. m., at the court-house, in Garland county.

A. CURL.
P. J. CALVIN.
JAS. B. WOOD.

(Feb. 21st W., 4, to.)

158 STATE OF ARKANSAS, }
County of Garland. }

I, H. M. Rector, Jr., publisher of the Daily and Weekly Telegraph, a newspaper published in the town of Hot Springs, Garland county, Arkansas, do solemnly swear that the notice to incorporate the town of Hot Springs, which is hereto attached, has been published for three consecutive times in said newspaper, as instructed.

H. M. RECTOR, JR.

Subscribed and sworn to before me this the 16th day of March, 1876.

W. A. KIRK, *J. P.*

Endorsed: County court. Petition of Wm. H. Gaines *et al.* for the incorporation of the town of Hot Springs. Filed Feb. 14th, 1876. A. W. B. Reed, clerk, by Z. Beldin, D. C.

159 In the Matter of the Petition for the Incorporation of the Town of Hot Springs.

Now, on this day, this matter having been presented to the court and fully considered, and having found that the petition contains all the necessary requirements for the incorporation and organization of an incorporated town, and being satisfied that the territory described in said petition is not embraced within the limits of any city or incorporated town, and that said petition has been signed by a majority of the legal voters residing within the territory described in said petition, said majority exceeding in number 20 qualified voters, as required by law; that the territory set out in said petition is accurately described, and that the map or plat annexed to said petition is an accurate map or plat thereof, which said map
160 or plat embraces the land described in the said petition as aforesaid, and that the name proposed in said petition for said town, to wit, "Hot Springs," is proper and sufficient to designate it from others of like kind in the State, and it being deemed right and proper, in the judgment and discretion of this court, that the prayer of said petition be granted, and that the said territory be organized into an incorporated town, as prayed for, to wit, "Hot Springs," it is therefore ordered and adjudged that the incorporated town as named and described in said petition be organized for general purposes, as required by law.

Given under my hand this 5th day of April, 1876.

J. W. JORDAN,
County Judge.

(Endorsed:) Filed April 5th, 1876. Duly recorded April 7, 1876. A. W. B. Reed, clerk, by Z. Beldin, D. C.

161 The foregoing are all and the only records in the office of the clerk of Garland county relating to the incorporation and fixing the limits of the town of Hot Springs, in said county. The original petition and map and ordinances referred to and copied from the record of them herein have been misplaced and cannot be found in the office of the clerk of said county. I don't know of any other map of said city on file in this office, except the one made part of this deposition, prior to year 1885.

There are no records in said office, within my knowledge, of the incorporation of said town as a city of the first class or as a city of the second class other than those alone set forth in my deposition, and none fixing the corporate limits of the same in the years 1883, 1884, and 1885, other than those above set forth, either as a

162 city of the first or second class, and that the limits as described in for-going map of the original limits of said town have not been increased or otherwise changed until the year 1886, when they were changed and increased to embrace and include the entire United States reservation of Hot Springs, in said county, as a city of the first class, which order was made of record in this office, but was, as is shown by the date thereof, subsequent to the year 1885, the time mentioned in the question, the entire United States reservation of the Hot Springs, in said county, as composed of the S. ½ sections 28 and 29, township 2 south, range 19 west; all of sections 32 and 33, in same township and range, and the N. ½ sections 4 and 5, in township 3 south, range 19 west.

W. H. Moyston, circuit clerk of Garland county, is absent

163 from the city of Hot Springs at the taking of this deposition.

The above-mentioned records are in my custody and keeping as such deputy clerk, and I have no interest, directly or indirectly, in this controversy. The list entitled assessment list of real estate assessed for taxes for Garland county for the year 1883 begins the columns relating to city lots, as shown by Exhibit "A" to my deposition.

EDWARD L. REED.

STATE OF ARKANSAS, }
County of Garland. }

I, James M. Anderson, a justice of the peace within and for Garland county, do certify that the for-going deposition of Edward L. Reed was taken before me and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said Edward L. Reed having been first

164 sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and that his statements were reduced to writing by me in his presence, neither plaintiff nor defendant being present, the deposition being taken on interrogatories, this 23rd February, 1888.

JAMES M. ANDERSON, *J. P.*

MICHAEL MCKEOGH, being introduced as a witness on behalf of said respondents and being first duly sworn, in answer to said interrogatories deposes as follows:

In answer to first interrogatory says: I am fifty years of age;
165 reside in city of Hot Springs; am city clerk of said city; was elected in 1886 and have served as such clerk ever since.

Answer to second interrogatory. I have no knowledge of the original incorporation of the town of Hot Springs or the original limits thereof or the incorporation of said town as a city of either second or first class or any limits of the same as such city of first or second class beyond the historical statements of the incorporation and limits of said town or of said town as a city contained in the published digest of the ordinances of the city of Hot Springs, digested and published by authority of said city on February 14th, 1887, a certified copy of which, in my handwriting, I append to and make part of my deposition, marked Exhibit "A."

To the best of my information the original ordinances incorporating the town of Hot Springs and any ordinances incorporating
166 said town as a city of either the first or second class and defining the limits of the same were destroyed by fire, the first in the fire of March, 1878, and any others, if existing subsequently, have been lost or destroyed and are not with the records in my office.

There is no official map of said town or city of Hot Springs in the office of said city clerk or copy of such map in said office or in existence, to my knowledge.

Further deponent saith not.

M. MCKEOGH.

EXHIBIT "A" TO MCKEOGH'S DEPOSITION.

On the 5th day of April, 1876, the county court of Garland county, on the petition of four hundred and seventy-three citizens and
167 residents of the territory hereinafter described, made an order, which was entered upon the records of the court, incorporating the town of Hot Springs, to be embraced within the following corporate limits and boundary lines, to wit: Beginning at a point on the south line of the Hot Springs reservation, situated in said county of Garland, in the State of Arkansas, at the center of section five, in township three south, of range nineteen west, running thence north parallel with the United States survey to the quarter-section corner on the south side of section twenty-nine (29), in township 2 south, of range nineteen west; thence on the line between sections twenty-nine and thirty-two to the southwest corner of the southeast quarter of the southeast quarter of section twenty-nine, in township two south, of range nineteen west; thence north by east to
168 the center of section twenty-eight, in township two south, of range nineteen west; thence south parallel with the United States land survey to the center of section thirty-three, in township two south, of range nineteen west; thence south by east to the southeast corner of the southwest quarter of the southeast quarter of sec-

tion thirty-three, in township two south, of range nineteen west; thence south parallel with the United States land survey to the southeast corner of the southwest quarter of the northeast quarter of section four, in township three south, of range nineteen west; thence west along the south line of the Hot Springs reservation parallel with the United States land survey to the center of section five, in township three south, of range nineteen west, the point of beginning. Said tract embraces twelve hundred (1,200) acres of land.

169 In pursuance of said order and after due notice thereof an election was held in said territory on the 22nd day of May, 1876, at which a mayor and board of aldermen for said incorporated town of Hot Springs were elected; and on the 27th of May, 1876, said mayor and board of aldermen met and organized and elected a town marshal and treasurer.

On the 1st of September, 1876, the incorporated town of Hot Springs was declared a city of the second class, and on the 13th March, 1879, was duly and in compliance with the requirements and conditions of law advanced to and declared to be a city of the first class.

The corporate limits and boundaries of the city remain as they were when the town was first incorporated. An ordinance
170 was passed by the council, previous to the election in 1882, extending the corporate limits so as to take in the whole of the original Hot Springs reservation, but by a failure to have the ordinance voted on at the said election, as required by law, it is yet inoperative.

171 EXHIBIT "A" TO DEPOSITION OF EDWARD L. REED.

List of Real Estate Assessed for Taxation, City of Hot Springs, —— County, Arkansas, for the Year 1883.

Whose name assessed.	Part of section.	Section.	Township.	Range.	Area, acres.	Valuation.	No. of town or city lot.	Block.	Value of town or city lot.	No. school district.	Valuation as equalized by deduction 20%	Valuation as equalized by deduction 20% from original equalization.

[On margin:] Exhibit "A" to deposition of Edward L. Reed.

(Endorsed:) Filed Feb. 25th, 1888. Ralph L. Goodrich, clerk.

(Here follows diagram marked p. 172.)

10.

173 Be it remembered that, in pursuance of the laws of the State of Arkansas, at regular session of the board of equalization of Garland county, Arkansas, which was held at the clerk's office of said county on Monday, the 4th day of June, A. D. 1883, said day being the day prescribed by law for holding a term or session of said board, there was present the Hon. John M. Harrell, R. W. Gibbons, and Eizekiel Golden, members of said board, who were duly sworn according to law and possessed the qualifications required by law, when the following proceedings were had, to wit:

Ordered that the board of equalization of Garland county, Ark., be proclaimed open pursuant to law, which was accordingly done by the sheriff of Garland county, Arkansas.

174 In the Matter of Organization and Election of a President of the Board of Equalization.

On motion of J. M. Harrell, an election was held for the election of a president of the board of equalization; whereupon the clerk proceeded to hold said election; and, it appearing that the Hon. J. M. Harrell received a majority of the votes cast, the said J. M. Harrell was declared duly elected as president of the board of equalization of said county.

In the Matter of Adjournment.

It appearing to the board of equalization that the time fixed by law for the assessment of property for the year 1883, to be returned to the county clerk, is 15 days after the 1st Monday in June, 1883, and it further appearing that the assessment for year
175 1883 has not been returned by the assessor of Garland county to the office of the county clerk, it is therefore ordered that the board of equalization of Garland county be, and is, adjourned until the 19th day of June, A. D. 1883, at 10 o'clock a. m.

JOHN M. HARRELL, *President.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

TUESDAY MORNING, 10 O'CLOCK, *June 19th*, 1883.

The board met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell, president; also present, R. W. Gibbons and Eizekiel Golden; and also present, De Soto Samuels, assessor.

The clerk laid before the board the returns of the real and personal property for the year 1883, as made by the assessor and verified
176 according to law. The board, upon examination of said returns, ascertained that there were omissions of tracts of land in said county and descriptions thereof which the owners had failed to furnish the assessor, and no description of which had been given in the abstract required to be delivered to the assessor by the clerk.

The assessor explained the cause of said omission and stated that he could supply the said omissions and all of them and make return complete by Saturday, the 23rd day of June, 1883.

On motion of Eizekiel Golden, Esq., in order to give the assessor the time required to complete his returns in the foregoing particulars, the board of equalization adjourned to meet at the clerk's office on Monday, the 25th day of June, 1883.

Ordered that the board of equalization of Garland county,
177 Ark., be and is adjourned until 9 o'clock a. m., June 25th, 1883.

JOHN M. HARRELL, *President.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

MONDAY MORNING, 9 O'CLOCK, *June 25th*, 1883.

The board of equilization met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell, president; Ezekiel Golden and R. W. Gibbons.

Now, on this day, it appearing to the board that the omissions of tracts of lands and descriptions thereof in the returns of the assessor as laid before the board by the clerk on the 19th day of June, 1883, had been corrected and supplied, and it further appearing that the returns of the assessor of real and personal property in Garland county, Ark., for the year 1883 are now full and complete, the board proceeded to equalize the real estate of said county by
178 adding to and taking from the valuation of such real property returned by the assessor for said county as follows, to wit.

(Then follows columns of assessments as equalized, which are omitted herefrom.)

Ordered that the board of equalization of Garland county be and is adjourned until Tuesday morning at 9 o'clock, June 26th, 1883.

JOHN M. HARRELL, *Pres'd't.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

TUESDAY MORNING, 9 O'CLOCK, *June 26th*, 1883.

The board met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell, president; Ezekiel Golden and R. W. Gibbons.

The board continued and proceeded to equalize the real estate of said county by adding to and taking from the valuation of
179 such real property returned by the assessor for said county for the year 1883, as follows, to wit.

(Columns of assessments as equalized omitted herefrom.)

Ordered that the board of equalization of Garland county, Ark.

be and is adjourned until to-morrow morning, at 9 o'clock, June 27th, 1883.

JOHN M. HARRELL, *Pres'd't.*
R. W. GIBBONS.
E. GOLDEN.

Attest: J. BELDIN, *Clerk.*

WEDNESDAY MORNING, 9 O'CLOCK, *June 27th*, 1883.

The board of equalization of Garland county, Arkansas, met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell, president; Ezekiel Golden and R. W. Gibbons.

The board continued and proceeded to equalize the real
180 estate of said county by adding to and taking from the valuation of such real property returned by the assessor for said county for the year 1883 as follows, to wit.

(Columns of assessments as equalized omitted herefrom.)

Ordered that the board be and is adjourned until to-morrow morning, at 9 o'clock, June 28th, 1883.

JOHN M. HARRELL, *President.*
R. W. GIBBONS.
E. GOLDEN.

Z. BELDIN, *Clerk.*

THURSDAY MORNING, 9 O'CLOCK, *June 28th*, 1883.

The board of equalization met pursuant to adjournment *adjournment.*

Present and presiding: The Hon. J. M. Harrell, pres-dent; Ezekiel Golden and R. W. Gibbons.

The board proceeded with the equalization of real estate of
181 said county of Garland by adding to and taking from the valuation of such real property returned by the assessor for said county for the year 1883 as follows.

(Columns of assessments as equalized omitted herefrom.)

Ordered that the board be and is adjourned until to-morrow morning at 8 o'clock, June 29th, 1883.

JOHN M. HARRELL, *Pres'd't.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

FRIDAY MORNING, 8 O'CLOCK, *June 29th*, 1883.

The board of equalization met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell, president; R. W. Gibbons, and Ezekiel Gilden.

The board proceeded to examine and equalize the real estate
of Garland county, Ark., by adding to and taking from
182 the valuation of such real property returned by the assessor — said county for the year 1883, as follows.

(Columns of assessments as equalized omitted herefrom.)

Ordered that the board of equalization be and is adjourned until the 30th day of June, 1883, at 9 o'clock a. m.

JOHN M. HARRELL, *Pres'd't.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN.

SATURDAY MORNING, 9 O'CLOCK, *June 30th*, 1883.

The board of equalization of Garland county met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell, president; Ezekiel Golden, and R. W. Gibbons.

The board proceeded to equalization of real estate of said
183 county of Garland by adding to and taking from the valuation of such real property returned by the assessor for said county for the year 1883, as follows.

(Columns of assessments as equalized omitted herefrom.)

Ordered that the board of equalization of Garland county be and is adjourned until Monday morning at 8 o'clock, July 2nd, 1883.

JOHN M. HARRELL, *Pres'd't.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

MONDAY MORNING, 8 O'CLOCK, *July 2nd*, 1883.

The board of equalization of Garland county met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell, president; Ezekiel Golden and R. W. Gibbons.

184 Upon the assessments and return of the assessor of Garland county, Arkansas, and before the board of equalization of said county, completed on the 26th day of June, 1883, for said year, and said board having, within the limited time afforded, carefully inquired into the money value of the tracts and lots of land described in said return as compared with the average valuation of the real property throughout said county, it is therefore ordered, considered, and adjudged that the true value in money of each tract and lot of land set down and described in said return for the year 1883, throughout the entire county of Garland, is estimated and equalized at twenty per cent. less than the value attached to each tract in said return not changed by the board, and
185 twenty per cent. less than the value entered in the records of the proceedings of the board opposite the lots and tracts mentioned in said proceedings as raised and reduced by the board upon said return in the process of equalizing said real estate according to the money value thereof as aforesaid.

Ordered that the clerk enter in the proper column of said return of real estate made by said assessor for the year 1883 as the equalized value found by said board of each lot and tract mentioned

therein the valuation for each of said tracts and lots according to the foregoing estimate and equalization.

Ordered that the list of personal property returned by said assessor for the year 1883 be accepted and adopted by said board as the equalized value of the personal property of said board for said year.

186 Ordered that the board of equalization of Garland county be and is adjourned until to-morrow morning at 9 o'clock July 3rd, 1883.

JOHN M. HARRELL, *Pres'd't.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

TUESDAY MORNING, 9 O'CLOCK, *July 3rd*, 1883.

The board of equalization of Garland county, Ark., met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell; Ezekiel Golden and R. W. Gibbons.

Whereas the board of equalization for Garland county, composed of John M. Harrell, Robert W. Gibbons, and Ezekiel Golden, who each possess the qualifications required by law and were duly
187 commissioned as members of said board and before entering upon the discharge of their duties as members of said board were, June 4th, 1883, by the clerk of said county, duly administered the oath prescribed in section 20, article 19, of the constitution of Arkansas, and the oath prescribed by the 84th section, acts of the General Assembly of Arkansas, approved March 31st, 1883, and on said 4th day of June, 1883, organized as said board and adjourned to the 19th day of June, 1883, and on said 19th day of June, 1883, adjourned to the 25th day of June, 1883, for the causes set forth in their several orders of adjournment entered in the records of the proceedings of said board; and whereas, having met, pursuant to said last-mentioned adjournment, on the 25th day of June, 1883, said board proceeded to ascertain the money value of
188 the real property of said county and to equalize the same throughout said county, and were so occupied continuously while in session from day to day until Monday, July 2nd, 1883. Said board were then in session when, upon said 2nd day of July, 1883, at 9 o'clock a. m., said board completed the equalization of the real estate of said county by actual examination and valuation and appropriate orders drawn as the orders of said board. At an early hour and before the county court of said county had met upon said 2nd day of July, 1883, for the purpose of levying the county taxes and making appropriation for the expenses of the county, in order that the returns of the assessor of real and personal property of said county and the orders of this board showing the valuation and equalization by said board of said real and personal property might

be laid before said county court for making such levy
189 and appropriations, said board were informed that the county court had adjourned until Tuesday, 10 o'clock a. m., July 3rd, 1883, to give time to said board to have their said valuation and equalization entered in the proper column of said return of real estate. Competent persons, to wit, E. H. Johnson and C. W. Fry, citizens of said county, were by Geo. G. Latta employed to assist the clerk of said board in making said return in the proper column of said return of real estate, and were so engaged and in possession of said return, in presence of said board, on the 2nd day of July, 1883, when Job Prichard, deputy sheriff of said county, came before said board, then in session and occupied by their duties as aforesaid, and stated verbally that he was ordered by the Hon. W. W. Wiggs, county judge of said county, to take said re-
190 turns, both of real and personal property, — to him immediately, and that if they were not so delivered he, the said Job Prichard, should take said returns forcibly.

The board objected to the taking of the said returns of real estate by said Prichard until lawfully notified that it was needed by the county court, and thereupon, without written warrant or process of any kind, said Job Prichard then and there forcibly took from the possession of said E. H. Johnson and C. W. Fry, employed as aforesaid, and from the custody of said board the said return of assessor of said county, in contempt of the authority of said board.

It is therefore considered and adjudged that the conduct of the said Job Prichard, as aforesaid, deserves the censure of this board as an act in gross contempt of said board and contrary to the form of the statute in such cases made and provided and against
191 the peace of said State.

Ordered that a copy of this entry be forwarded to the prosecuting attorney of the seventh judicial circuit of said State.

Ordered that the board of equalization of Garland county, Ark., be and is adjourned until called to meet again by the president of said board.

J. M. HARRELL, *Pres'd't.*
R. W. GIBBON.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

The board of equalization met, in compliance with call of the president, Tuesday morning, July 5th, 1883, in the clerk's office.

Present and presiding: The Hon. John M. Harrell, president of the board, and E. Golden and R. W. Gibbons, Esq.

Upon the examination and comparison of the records of the board and the assessor's return of real estate as completed
192 by the clerk in accordance with the orders of the board, the board finds that the entries in the two several columns, one of which is headed valuation as equalized by reduction of twenty per cent. from assessor's valuation, and valuation as equalized by reduction of twenty per cent. from original equalization respectively, are both of said columns deductions of twenty per cent. from the

original equalization as made by this board, the assessor's valuation adopted by the board being as much the original equalization of this board as those increased or diminished by the board upon said assessor's valuation, and that said entries are correct as the equalized valuation of the real estate of said country, and the same are hereby approved.

It is therefore ordered, considered, and adjudged that the
193 sums in said two columns above designated opposite the lots and tracts of lands to which they are affixed are the equalized valuations in money as made by this board, according to law and the requirements of *of* their oath of office, and to be and remain the equalized valuation of said real estate until changed as provided by law.

Ordered that the thanks of this board are due the assessor and C. W. Fry, his assistant, for the assessor's returns of real estate as made out by them, and to E. H. Johnson, Esq., for the use of his plats copied from the original surveys of the Hot Springs reservation, which were of great service to the board in ascertaining areas of lots.

Ordered that the board of equalization of Garland county adjourn *sine die*.

JOHN M. HARRELL, *President.*
E. GOLDEN,
R. W. GIBBONS,
Members of the Board.

194 *Clerk's Certificate to Transcript.*

STATE OF ARKANSAS, }
County of Garland. }

I, W. H. Moyston, clerk of the circuit court and *ex officio* clerk of county court within and for the county and State aforesaid, do hereby certify that the annexed and for-going pages contain a true copy of the record entries of the board of equalization as therein set forth and as the same appears of record in my office, record of county court, Garland county, Arkansas.

Witness my hand and official seal this 27th day of March, 1888.

W. H. MOYSTON, *Clerk.*

(Endorsed:) Filed April 9th, 1888. Ralph L. Goodrich, clerk.

195 # 11.

STATE OF ARKANSAS, }
County of Garland. }

I, Ellis Woolman, do solemnly swear that I am the publisher of the Weekly Sentinel, a weekly newspaper printed and published in Garland county, State of Arkansas; that I was such publisher at and during the publication of the annexed legal advertisement and

at the date of the several publications of said advertisement hereinafter stated, and during said periods and at said dates said newspaper was printed and had a *bona fide* circulation in said county; that said newspaper had been regularly printed and published in said county and had a *bona fide* circulation therein for a period of one month next before the date of the first publication of said advertisement, and that said advertisement was published in the
196 regular weekly issues of said newspaper once a week for two consecutive weeks; the first publication thereof had been made on the 16th day of May, 1885, and the last on the 23rd day of May, 1885.

ELLIS WOOLMAN.

Subscribed and sworn to before me this 9th day of November, 1887.

W. H. MOYSTON, *Clerk.*

In whose name sold.	Year forfeited.	No. of lot.	No. of block.	Value.	State tax.	School tax.	Sinking-fund tax.	Insane asylum tax.	County taxes, penalty and costs.	City tax.	District school tax.	Total penalty and costs.	Remarks.
Jones, Isaac	1884	1	28	120	6	24	48	6	60	------	60	3 50	
Spears, "	------	6	33	200	10	40	80	10	1 00	------	1 00	5 20	
Allord, S. S.	------	4	41	200	10	40	80	10	1 00	1 00	1 00	6 45	
" "	------	2	44	200	10	40	80	10	1 00	1 00	1 00	6 45	
Rice, Norton	------	5	47	200	10	40	80	10	1 00	1 00	1 00	6 45	
" Mrs.	------	6	47	1,060	53	2 12	4 24	53	5 30	5 30	5 50	30 10	
Allord, S. S.	------	10	49	160	8	32	64	8	80	80	80	5 35	
" "	------	11	49	160	8	32	64	8	80	80	80	5 35	
" "	------	9	50	240	12	48	96	12	1 20	1 20	1 20	7 55	
Greer, J. M., & Co.	------	13	53	1,000	50	2 00	4 00	50	5 00	5 10	5 00	28 45	
Ledwidge, P. J.	------	3	67	240	12	48	96	12	1 20	1 20	1 20	7 55	
Rix, C. N.	------	7	72	120	6	24	48	6	60	60	60	4 25	
" "	------	8	72	120	6	24	48	6	60	60	60	4 25	
Finley, Ann	------	6	74	80	4	16	32	4	40	40	40	3 15	
Ellis, J. W.	------	5	75	240	12	48	96	12	1 20	1 20	1 20	7 55	
Barnett Heirs	------	9	128	816	41	1 63	3 26	41	4 08	4 08	4 08	23 39	
Crabtree, Adele	------	13	136	240	12	48	96	12	1 20	1 20	1 20	7 55	
Harris, James	N. p't.	9	137	80	4	16	32	4	40	40	40	3 15	
Peeples, A.	------	20	137	320	16	64	1 28	16	1 60	1 60	1 60	9 75	
Parks and Murger	------	5	140	4,000	2 00	8 00	16 00	2 00	20 00	20 00	20 00	110 95	
Ware, Jesse	------	6	140	3,200	1 60	6 40	12 80	1 60	16 00	16 00	16 00	88 95	
Walsh, W. P.	------	14	142	400	20	80	1 60	20	2 00	2 00	2 00	11 95	
Hawkins, Fanny L. Monord	------	9	144	180	9	36	72	9	90	90	90	5 90	
Possmore, W. P.	------	1	145	160	8	32	64	8	80	80	80	5 35	
" "	------	2	158	80	4	16	32	4	40	40	40	3 15	
Belding, Geo.	------	3	158	80	4	16	32	4	40	40	40	3 15	
Possmore, W. P.	------	6	160	240	12	48	96	12	1 20	------	1 20	6 05	
Crawford, Annie	------	5	169	68	3	14	27	3	34	------	34	2 39	
Ballentine, H. A.	------	8	183	200	10	40	80	10	1 00	------	1 00	5 20	
" "	------	2	192	160	8	32	64	8	80	------	80	4 35	
" "	------	3	192	160	8	32	64	8	80	------	8	4 35	
" "	S. W. S. E. sec. 9, T. 3, R. 19.			800	------	------	------	------	------	------	------	17 95	

198 In whose name assessed.	No. of town or city lot.	Block.	Value of town or city lot.	Total value of real estate as equalized by deducting 20 %.	No. of school district.	Valuation, lands as equalized by deducting 20 % from original equalization.
Jones, Isaacs	1	28	150	120	6	
Allord, L. S.	4	41	250	200	"	
" "	2	44	250	200	"	
Rice, Norton	E. ½ 5	47		200	"	
" Mrs.	6	47	700	1,060	"	
Allord, L. S.	10	49	200	160	"	
" "	11	49	200	160	"	
" "	9	50	300	240	"	
Green, J. M., & Co.	13	53	1,250	1,000	"	
Unknown	3	67	300	240	"	
Adams, J. H.	7	72	150	120		
" "	8	72	150	120		
Finley, Annie	6	74	100	80		
Ellis, J. W.	5	75	300	240		
Barnett Heirs	9	128	1,020	816		
Crabtree, Adeline, 50 feet on Robins street	N. W. part 13	136	300	240		
Unknown	N. E. part 9	137	100	80		
Peoples, Alexander	20	137	600	400		320
Loyley, Annie	5	140	7,000	5,000		4,000
Ware, Jesse	6	140	5,000	4,000		3,200
Walsh, W. P.	14	142	500	400		
Watkins, Fanny A.	9	144	225	180		
Finley, John	1	145	200	160		
Ledwidge, P. J.	2	158	100	80		
" "	3	158	100	80		
Barnes, P.	6	160	300	240		
Holt, Marietta E.	5	169	85	68		
Crawford, J. B.	8	183	250	200		
Ballentine, H. A.	2	192	200	160		
" "	3	192	200	160		
" "	S.W. S. E. S. 9, T. 3, R. 19, area, 40 acres		1,000	800		

199 STATE OF ARKANSAS, }
County of Garland. }

I, De Soto Samuel, assessor, do solemnly swear that the for-going is correct, and that I have appraised each tract or lot of land, except United States or State land, at its true value in money, and not what it would bring at auction or at forced sale, so help me God.

D. SAMUEL, *Assessor.*

Sworn to and subscribed before me this 19th day of June, 1883.

[SEAL.] Z. BELDIN, *Clerk.*

200 #13.

Board of Equalization, Garland County. June Term, 1883.

Be it rem'bered that, in pursuance of the laws of the State of Arkansas, at a regular session of the board of equalization of Garland county, Arkansas, which was held at the clerk's office of said county on Monday, the 4th day of June, A. D. 1883, said day being the time prescribed by law for holding a term or session of said board, there *was* present the Hon. John M. Harrell, R. W. Gibbons, and Ezebiel Golden, members of said board, who were duly sworn according to law and possess the qualifications required by law, when the following proceedings were had, to wit:

Ordered that the board of equalization of Garland county, Arks., be proclaimed open pursuant to law, which was accordingly done by the sheriff of Garland county, Arkansas.

201 In the Matter of Organization and Election of a President of the Board of Equalization.

On motion of J. M. Harrell, an election was held for the election of a president of the board of equalization; whereupon the clerk proceeded to hold said election; and, it appearing that the Hon. J. M. Harrell received a majority of the votes cast, the said J. M. Harrell was declared duly elected as president of the board of equalization of said county.

In the Matter of Adjournment.

It appearing to the board of equalization that the time fixed by law for the assessment of property for the year 1883, to be returned to the county clerk, is fifteen days after the first Monday in June, 1883; and it further appearing that the assessment for the year 1883 has not been returned by the assessor of Garland county
202 to the office of the county clerk—

It is therefore ordered that the board of equalization of Garland county be, and is, adjourned until the 19th day of June, A. D. 1883, at ten o'clock a. m.

JOHN M. HARRELL, *President.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

TUESDAY MORNING, TEN O'CLOCK, *June 19th*, 1883.

The board met pursuant to adjournment.

Present and presiding, the Hon. J. M. Harrell, president; also present, R. W. Gibbons and Ezekiel Golden, and also present, De Soto Samuel, assessor.

The clerk laid before the board the returns of the real and personal property for the year 1883 as made by the assessor and verified according to law. The board, upon examination of said
203 returns, ascertained that there were omissions of tracts of land in said county and description thereof, which the owner

had failed to furnish the assessor, and no description of which had been given in the abstract required to be delivered to the assessor by the clerk.

The assessor explained the cause of said omission-, and stated that he could supply the said omissions and all of them and make returns complete by Saturday, the 23rd day of June, 1883.

On motion of Ezekiel Golden, Esq., in order to give the assessor the time required to complete his returns in the foregoing particulars, the board of equalization adjourned to meet at the clerk's office on Monday, the 25th day of June, 1883.

Ordered that the board of equalization of Garland county, Ark., be, and is, adjourned until nine o'clock a. m. June 25th, 1883.

JOHN M. HARRELL, *President.*
R. W. GIBBONS.
E. GOLDEN.

Attest: Z. BELDIN, *Clerk.*

204 MONDAY MORNING, 9 O'CLOCK, *June 25th*, 1883.

The board of equalization met pursuant to adjournment Present and presiding: The Hon. J. M. Harrell, president; Ezekiel Golden, and R. W. Gibbons.

Now, on this day, it appearing to the board that the omissions of tracts of land and descriptions thereof in the returns of the assessor as laid before the board by the clerk on the 19th day of June, 1883, had been corrected and supplied; and it further appearing that the returns of the assessor of real and personal property in Garland county, Arkansas, for the year 1883 are now full and complete, the board proceeded to equalize the real estate of said county by adding to and taking from the valuation of such real property returned by the assessor for said county as follows, to wit:

205 And afterwards, to wit, on the 29th day of June, 1883, said day being a subsequent adjourned day of said term of said board, among other things the following proceedings were had: The board proceeded to examine and equalize the real estate of Garland county, Arks., by adding to and taking from the valuation of such real property returned by the assessor for said county for the year 1883 as follows:

To whom assessed.	Lot.	Bl'k.	Value as assessed.	Value as equalized.
	20	137	$600	$400

Ordered that the board of equalization be, and is, adjourned until the 30th day of June, 1883, at 9 o'clock a. m.

JOHN M. HARRELL, *Pres'd't.*
R. W. GIBBONS.
E. GOLDEN.

SATURDAY MORNING, 9 O'CLOCK, *June 30th*, 1883.

206 The board of equalization of Garland county met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell, president; Ezekiel Golden, and R. W. Gibbons.

The board proceeded to equalization of real estate of said county of Garland by adding to and taking from the valuation of such real property returned by the assessor for said county for the year 1883 as follows:

To whom assessed.	Lot.	Bl'k.	Value as assessed.	Value as equalized.
	5	140	7,000	5,000
	6	140	5,000	4,000

And afterwards, to wit, on the second day of July, 1883, said day being a subsequent adjourned day of said board, among other proceedings the following were had, to wit: Upon the assessments and return of the assessor of Garland county, Ark., and before the board of equalization of said county, completed on the 26th day of
207 June, 1883, for said year, and said board having within the limited time afforded carefully inquired into the money value of the tracts and lots of land described in said return as compared with the average valuation of the real property throughout said county, it is therefore ordered, considered, and adjudged that the true value in money of each tract and lot of land set down and described in said return for the year 1883 throughout the entire county of Garland is estimated and equalized at twenty per cent. less than the value attached to each tract in said return not changed by the board, and twenty per cent. less than the value entered in the records of the proceedings of the board opposite the lots and tracts mentioned in said proceedings as raised and reduced by the board upon said return in the process of equalizing said real estate ac-
208 cording to the money value thereof as aforesaid.

Ordered that the clerk enter in the proper column of said return of real estate made by said assessor for the year 1883, as the equalized value found by said board of each lot and tract mentioned therein, the valuation for each of said tracts and lots according to the foregoing estimate and equalization.

Ordered that the list of personal property returned by said assessor for the year 1883 be accepted and adopted by said board as the equalized value of the personal property of said county for said year.

And afterwards, to wit, on the 5th day of July, 1883, said day being a subsequent adjourned day of said board, among other proceedings the following were had, to wit:

The board of equalization met, in compliance with call of the president, Thursday morning, July 5th, 1883, in the clerk's office.

Present and presiding: The Hon. J. M. Harrell, president
209 of the board, and E. Golden and R. W. Gibbons, Esq.

Upon the examination and comparison of the records of the board and the assessor's return of real estate, as compared by the clerk in accordance with the order of the board, the board finds that the entries in the two several columns, one of which is headed "valuation as equalized by reduction of twenty per cent. from assessor's valuation," and "valuation as equalized by reduction of twenty per cent. from original equalization," respectively, are both of said columns' deductions of twenty per cent. from the original equalization as made by this board, the assessor's valuation adopted by the board being as much the original equalization of this board as those increased or dim-nished by the board upon said assessor's valuation, and that said entries are cor-
210 rect as the equalized valuation of the real estate of said county, and the same are hereby approved. It is therefore ordered, considered, and adjudged that the sums in said two columns above designated opposite the lots and tracts of lands to which they are affixed are the equalized valuations in money as made by this board according to law and the requirements of their oath of office, and to be and remain the equalized valuation of said real estate until changed, as approved by law.

Ordered that the thanks of this board are due the assessor and C. W. Fry, his assistant, for the assessor's returns of real estate as made out by them, and E. H. Johnson, Esq., for the use of his plats copied from the original surveys of the Hot Springs reservation, which were of great service to the board in ascertaining areas of lots.

Ordered that the board of equalization of Garland county
211 adjourn *sine die*.

JOHN M. HARRELL,
Pres'd't Board.
E. GOLDEN,
R. W. GIBBONS,
Members of the Board.

SATURDAY MORNING, 9 O'CLOCK, *June 30th*, 1883.

206 The board of equalization of Garland county met pursuant to adjournment.

Present and presiding: The Hon. J. M. Harrell, president; Ezekiel Golden, and R. W. Gibbons.

The board proceeded to equalization of real estate of said county of Garland by adding to and taking from the valuation of such real property returned by the assessor for said county for the year 1883 as follows:

To whom assessed.	Lot.	Bl'k.	Value as assessed.	Value as equalized.
	5	140	7,000	5,000
	6	140	5,000	4,000

And afterwards, to wit, on the second day of July, 1883, said day being a subsequent adjourned day of said board, among other proceedings the following were had, to wit: Upon the assessments and return of the assessor of Garland county, Ark., and before the board of equalization of said county, completed on the 26th day of
207 June, 1883, for said year, and said board having within the limited time afforded carefully inquired into the money value of the tracts and lots of land described in said return as compared with the average valuation of the real property throughout said county, it is therefore ordered, considered, and adjudged that the true value in money of each tract and lot of land set down and described in said return for the year 1883 throughout the entire county of Garland is estimated and equalized at twenty per cent. less than the value attached to each tract in said return not changed by the board, and twenty per cent. less than the value entered in the records of the proceedings of the board opposite the lots and tracts mentioned in said proceedings as raised and reduced by the board upon said return in the process of equalizing said real estate ac-
208 cording to the money value thereof as aforesaid.

Ordered that the clerk enter in the proper column of said return of real estate made by said assessor for the year 1883, as the equalized value found by said board of each lot and tract mentioned therein, the valuation for each of said tracts and lots according to the foregoing estimate and equalization.

Ordered that the list of personal property returned by said assessor for the year 1883 be accepted and adopted by said board as the equalized value of the personal property of said county for said year.

And afterwards, to wit, on the 5th day of July, 1883, said day being a subsequent adjourned day of said board, among other proceedings the following were had, to wit:

The board of equalization met, in compliance with call of the president, Thursday morning, July 5th, 1883, in the clerk's office.

Present and presiding: The Hon. J. M. Harrell, president
209 of the board, and E. Golden and R. W. Gibbons, Esq.

Upon the examination and comparison of the records of the board and the assessor's return of real estate, as compared by the clerk in accordance with the order of the board, the board finds that the entries in the two several columns, one of which is headed "valuation as equalized by reduction of twenty per cent. from assessor's valuation," and "valuation as equalized by reduction of twenty per cent. from original equalization," respectively, are both of said columns' deductions of twenty per cent. from the original equalization as made by this board, the assessor's valuation adopted by the board being as much the original equalization of this board as those increased or diminished by the board upon said assessor's valuation, and that said entries are cor-
210 rect as the equalized valuation of the real estate of said county, and the same are hereby approved. It is therefore ordered, considered, and adjudged that the sums in said two columns above designated opposite the lots and tracts of lands to which they are affixed are the equalized valuations in money as made by this board according to law and the requirements of their oath of office, and to be and remain the equalized valuation of said real estate until changed, as approved by law.

Ordered that the thanks of this board are due the assessor and C. W. Fry, his assistant, for the assessor's returns of real estate as made out by them, and E. H. Johnson, Esq., for the use of his plats copied from the original surveys of the Hot Springs reservation, which were of great service to the board in ascertaining areas of lots.

Ordered that the board of equalization of Garland county
211 adjourn *sine die*.

JOHN M. HARRELL,
Pres'd't Board.
E. GOLDEN,
R. W. GIBBONS,
Members of the Board.

Owners' names.		Lot.	Bl'k.	Valuation of town or city lot.	No. of school dist.	Insane asylum fund.	General State tax.	Sinking fund.	School fund.	General county.	S. D. tax.	City.
Jones, Isaac		1	28	120	6	06	06	48	24	60	60	
Spears, "	Part	6	33	200	"	10	10	80	40	1 00	1 00	
Allord, L. S.		4	41	200	"	10	10	80	40	1 00	1 00	
" "		2	44	200	"	10	10	80	40	1 00	1 00	
Rice, Norton	E. ½	5	47	200	"	10	10	80	40	1 00	1 00	
" Mrs.		6	47	1,060	"	53	53	4 24	2 12	5 30	5 30	5 30
Allord, S. S.		10	49	160	"	08	08	64	32	80	80	80
" "		11	49	160	"	08	08	64	32	80	80	80
" "		9	50	240	"	12	12	96	48	1 20	1 20	1 20
Green, J. M., & Co.		13	53	1,000	"	50	50	4 00	2 00	5 00	5 00	5 00
Ledwidge, P. J.		3	67	240	"	12	12	96	48	1 20	1 20	1 20
Rix, C. N.		7	72	120	"	06	06	48	24	60	60	60
" "		8	72	120	"	06	06	48	24	60	60	60
Finley, Ann		6	74	80	"	04	04	32	16	40	40	40
Ellis, J. W.		5	75	240	"	12	12	96	48	1 20	1 20	1 20
Barnett heirs		9	128	816	"	41	41	3 26	1 63	4 08	4 08	4 08
Crabtree, Adeline	N. W. part, 50 feet on Robins street.	13	136	240	"	12	12	96	48	1 20	1 20	1 20
Harris, James	N. E. part	9	137	80	"	4	4	32	16	40	40	40
Peoples, A.		20	137	320	"	16	16	1 28	64	1 60	1 60	1 60
Munger & Parker		5	140	4,000	"	2 00	2 00	16 00	8 00	20 00	20 00	20 00
Ware, Jesse		6	140	3,200	"	1 60	1 60	12 80	6 40	16 00	16 00	16 00
Walsh, W. P.		14	142	400	"	20	20	1 60	80	2 00	2 00	2 00
Hawkins, Fanny A		9	144	180	"	09	09	72	36	90	90	90
Molen, L.		1	145	160	"	08	08	64	32	80	80	80
Passmore, W. P.		2	158	80	"	04	04	32	16	40	40	40
" "		3	158	80	"	04	04	32	16	40	40	40
Belding, Geo.		6	160	240	"	12	12	96	48	1 20	1 20	
Passmore, W. P.		5	169	68	"	03	03	27	14	34	34	
Crawford, Annie		8	183	200	"	10	10	80	40	1 00	1 00	
Ballentine, H. A.		2	192	160	"	8	8	64	32	80	80	
" "		3	192	160	"	8	8	64	32	80	80	
" "	S. W. S. E. 9, 3, 19, 40 acres.	1	------	800	9	40	40	3 20	1 60	4 00	4 00	

	Part of section.	Lot.	Block.	Valuation of town or city lot.	No. of school district.	Insane asylum fund.	General State tax.	Sinking fund.	School fund.	County, general.	S. D.	City.
Isaac Jones		1	28	120	6	06	06	48	24	60	60	
" Spears		6	33	200	"	10	10	80	40	1 00	1 00	
L. S. Allord		4	41	200	"	10	10	80	40	1 00	1 00	1 00
" "		2	44	200	"	10	10	80	40	1 00	1 00	1 00
Norton Rice		5	47	200	"	10	10	80	40	1 00	1 00	1 00
Mrs. "		6	47	1,060	"	53	53	4 24	2 12	5 30	5 30	5 30
L. S. Allord		10	49	160	"	8	8	64	32	80	80	80
" "		11	49	160	"	8	8	64	32	80	80	80
" "		9	50	240	"	12	12	96	48	1 20	1 20	1 20
J. M. Green & Co.		13	53	1,000	"	50	50	4 00	2 00	5 00	5 00	5 00
P. J. Ledwidge		3	67	240	"	12	12	96	48	1 20	1 20	1 20
C. N. Rix		7	72	120	"	6	6	48	24	60	60	60
" "		8	72	120	"	6	6	48	24	60	60	60
Anny Finley		6	74	80	"	4	4	32	16	40	40	40
J. W. Ellis		5	75	240	"	12	12	96	48	1 20	1 20	1 20
Barnett heirs		9	128	816	"	41	41	3 26	1 63	4 08	4 08	4 08
Adele Crabtree	Part	13	136	240	"	12	12	96	48	1 20	1 20	1 20
James Harris	N. part	9	137	80	"	4	4	32	16	40	40	40
A. Peoples		20	137	320	"	16	16	1 28	64	1 60	1 60	1 60
Parks and Munger		5	140	4,000	"	2 00	2 00	16 00	8 00	20 00	20 00	20 00
Jesse Ware		6	140	3,200	"	1 60	1 60	12 80	6 40	16 00	16 00	16 00
W. P. Walsh		14	142	400	"	20	20	1 60	80	2 00	2 00	2 00
S. Monord		1	145	160	"	8	8	64	32	80	80	
Fanny Hawkins		9	144	180	"	9	9	72	36	90	90	90
W. P. Passmore		2	158	80	"	4	4	32	16	40	40	40
" "		3	158	80	"	4	4	32	16	40	40	40
Geo. Belding		6	160	240	"	12	12	96	48	1 20	1 20	
W. P. Passmore		5	169	68	"	3	3	27	14	34	34	
Annie Crawford		8	183	200	"	10	10	80	40	1 00	1 00	
H. A. Ballentine		2	192	160	"	8	8	64	32	80	80	
" "		3	192	160	"	8	8	64	32	80	80	
" "	S. W. S. E. 9, 3, 19			800	9	40	40	3 20	1 60	4 00	4 00	

STATE OF ARKANSAS, }
County of Garland. }

I, W. F. Hanseley, collector for Garland county, Arkansas, do certify that the foregoing is a true and correct list of real estate on which delinquent taxes stand charged, as the same are described on the tax books.

W. F. HANSELEY,
Sheriff and ex Officio Collector for Garland County,
By S. H. FURGUSON, *Deputy.*

Sworn to and subscribed before me this 27th day of April, 1885.

Z. BELDIN, *Clerk.*

214 The State of Arkansas to the sheriff of Garland county, Arkansas:

You are hereby authorized and commanded to collect of the several persons named in the annexed tax books of Garland county, Arkansas, for the year 1884, the *per capita* tax and the tax on lands, personal property, moneys, and credits with which each stands assessed, and if after the time allowed by law for the payment of such taxes any shall remain unpaid, then you are commanded to levy and make such unpaid *per capita* tax and the taxes of personal property, moneys, and credits, with costs, out of the goods or chattels of the person charged therewith and the taxes upon real estate out of such real property in the manner and within the time prescribed by law; and you are further commanded to account and pay
215 to the proper officer the amount by you collected in the manner and in the time required by law.

In testimony whereof I, Zibra Beldin, clerk of the circuit court and *ex officio* clerk of the county court of Garland county, Arkansas, have hereunto set my hand and affixed the seal of my office this 3rd day of November, 1884.

Z. BELDIN, *Clerk.*

216 *Delinquent Tax Sale.*

The lands and lots and parts of lots returned delinquent in Garland county for the year 1884, together with the taxes and penalty charged thereon agreeably to law, are contained and described in the following list, viz:

Town Lots.

Name of owner.	No. of lot.	Block.	Valuation.	Total amount of taxes and penalty and cost.
Jones, Isaac	1	28	120	$3 50
Spears, "	6	33	200	5 20
Allord, L. S.	4	41	200	6 45
" Same "	2	44	200	6 45
Rice, Norton	5	47	200	6 45
" Mrs.	6	47	1,060	30 10
Allord, L. S.	10	49	160	5 35
" Same "	11	49	160	5 35
" "	9	50	240	7 55
Green, J. M., & Co.	13	52	1,000	28 45
Ledwidge, P. J.	3	67	240	7 55
Rix, C. N.	7	72	120	4 25
" Same "	8	72	120	4 25
Finley, Anny	6	74	80	3 15
Ellis, J. W.	5	75	240	7 55
217 Baarnett heirs	9	128	816	23 39
Crabtree, Adele	Part 13	136	240	7 55
Harris, Jas.	N. part 9	137	80	3 15
Peoples, A.	20	137	320	9 75
Parks and Munger	5	140	4,000	110 95
Ware, Jesse	6	140	3,200	88 95
Walsh, W. P.	14	142	400	11 95
Hawkins, Fanny	9	144	180	5 90
Moorcland, L.	1	145	160	5 35
Passmore, W. P.	2	158	80	3 15
" Same "	3	158	80	3 15
Belding, Geo.	6	160	240	6 05
W. P. Passmore	5	169	68	2 39
Crawford, Anny	8	183	200	5 20
Ballentine, H. A.	2	192	160	4 35
" "	3	192	160	4 35
" " S. W. S. E. sec. 9, T. 3 S., R. 19 W.			800	17 95

And notice is hereby given that said several tracts, lots, or parts of lots, or so much thereof as may be necessary to pay the taxes, penalty, and costs due thereon, will be sold at the court-house,
218 in said county, on the fourth Monday in May, 1885, unless the said taxes, penalty, and costs be paid before that time, and that the sale will be continued from day to day until the said tracts, lots, and parts of lots be sold.

ZIBA BELDIN,
Clerk of Garland Co.

Hot Springs, May 5th, 1885.

STATE OF ARKANSAS, }
County of Garland, } ss:

I, Ellis Woolman, do solemnly swear that I am the publisher of the Weekly Sentinel, a weekly newspaper printed and published in Garland county, State of Arkansas; that I was such publisher at and during the publication of the annexed legal advertisement and at the dates of the several publications of said advertisement hereinafter stated, and that during said period and at said dates said
219 newspaper was printed and had a *bona fide* circulation in said county; that said newspaper had been regularly printed and published in said county and had a *bona fide* circulation therein for the period of one month next before the date of the first publication of said advertisement, and that said advertisement was published, in the regular weekly issues of said newspaper, once a week for two consecutive weeks. The first publication thereof had been made on the 16th day of May, 1885.

ELLIS WOOLMAN.

Subscribed and sworn to before me this 9th day of November, 1887.

W. H. MOYSTON, *Clerk.*

Name.	Lot.	Blk.	Valuation.	State tax.				County tax.	School tax.	City tax.	District No.	Total tax.	25 per cent. penalty.	Clerk's fees.	Advertising.	Sheriff's fees.	Total tax, penalty, & cost.	Date of sale.			To whom sold.
				General purposes.	State school.	Interest on public debt.	Insane asylum.	County general.	Teachers.	General purposes.								Yr.	Mo.	Day.	
Jones, Isaac	1	28	120	6	24	48	6	60	60	.....	6	2 04	51	35	25	35	3 50	1885	5	25	State of Arkansas.
Spears, "	6	33	200	10	40	80	10	1 00	1 00	.....	"	3 40	85	35	25	35	5 20	"	"	"	"
Allord, L. S.	4	41	200	10	40	80	10	1 00	1 00	1 00	"	4 40	1 10	35	25	35	6 45	"	"	"	"
" "	2	44	200	10	40	80	10	1 00	1 00	1 00	"	4 40	1 10	35	25	35	6 45	"	"	"	"
Rice, Norton	5	47	200	10	40	80	10	1 00	1 00	1 00	"	4 40	1 10	35	25	35	6 45	"	"	"	"
" Mrs.	6	47	1,960	53	2 12	4 24	53	5 30	5 30	5 30	"	23 32	5 83	35	25	35	30 10	"	"	"	"
Allord, L. S.	10	49	160	8	32	64	8	80	80	80	"	3 52	88	35	25	35	5 35	"	"	"	"
" "	11	49	160	8	32	64	8	80	80	80	"	3 52	88	35	25	35	5 35	"	"	"	"
" "	9	50	240	12	48	96	12	1 20	1 20	1 20	"	5 28	1 32	35	25	35	7 55	"	"	"	"
Green, J. M., and Co.	13	53	1,000	50	2 00	4 00	50	5 00	5 00	5 00	"	22 00	5 50	35	25	35	28 45	"	"	"	"
Ledwidge, P. J.	3	67	240	12	48	96	12	1 20	1 20	1 20	"	5 28	1 32	35	25	35	7 55	"	"	"	"
Rix, C. N.	7	72	120	6	24	48	6	60	60	60	"	2 64	66	35	25	35	4 25	"	"	"	"
" "	8	72	120	6	24	48	6	60	60	60	"	2 64	66	35	25	35	4 25	"	"	"	"
Finley, Ann	6	74	80	4	16	32	4	40	40	40	"	1 76	44	35	25	35	3 15	"	"	"	"
Ellis, J. W.	5	75	240	12	48	96	12	1 20	1 20	1 20	"	5 28	1 32	35	25	35	7 55	"	"	"	"
Barrett heirs	9	128	816	41	1 63	3 26	41	4 08	4 08	4 08	"	17 95	4 49	35	25	35	23 39	"	"	"	"
Crabtree, Adele	Part 13	136	240	12	48	96	12	1 20	1 20	1 20	"	5 28	1 32	35	25	35	7 55	"	"	"	"
Harris, Jas.	N. " 9	137	80	4	16	32	4	40	40	40	"	1 76	44	35	25	35	3 15	"	"	"	"
Peoples, A.	20	137	320	16	64	1 28	16	1 60	1 60	1 60	"	7 04	1 76	35	25	35	9 75	"	"	"	"
Parks and Munger	5	140	4,000	2 00	8 00	16 00	2 00	20 00	20 00	20 00	"	88 00	22 00	35	25	35	110 95	"	"	"	"
Ware, Jesse	6	140	3,200	1 60	6 40	12 80	1 60	16	16	16	"	70 40	17 60	35	25	35	88 95	"	"	"	"
Walsh, W. P.	14	142	400	20	80	1 60	20	2 00	2 00	2 00	"	8 80	2 20	35	25	35	11 95	"	"	"	"
Hawkins, Fanny	9	144	180	9	36	72	9	90	90	90	"	3 96	99	35	25	35	5 90	"	"	"	"
Morelon, I.	1	145	160	8	32	64	8	80	80	80	"	3 52	88	35	25	35	5 35	"	"	"	"
Passmore, W. P.	2	158	80	4	16	32	4	40	40	40	"	1 76	44	35	25	35	3 15	"	"	"	"
" "	3	158	80	4	16	32	4	40	40	40	"	1 76	44	35	25	35	3 15	"	"	"	"
Belding, Geo.	6	160	240	12	48	96	12	1 20	1 20	.....	.....	4 08	1 02	35	25	35	6 05	"	"	"	"
Passmore, W. P.	5	160	68	3	14	27	3	34	34	.....	.....	1 15	29	35	25	35	2 39	"	"	"	"
Crawford, Annie	8	183	200	10	40	80	10	1 00	1 00	.....	.....	3 40	85	35	25	35	5 20	"	"	"	"
Ballentine, H. A.	2	192	160	8	32	64	8	80	80	.....	.....	2 72	68	35	25	35	4 35	"	"	"	"
" " parts of sec.	3	192	160	8	32	64	8	80	80	.....	.....	2 72	68	35	25	35	4 35	"	"	"	"
" " S. W. S. E. sec. 9, T. 3, R. 19.			800	40	1 60	3 20	40	4 00	4 00	.....	.....	13 60	3 40	35	25	35	17 95	"	"	"	"

221 *Deposition of Ellis Woolman.*

I. My name is Ellis Woolman; my age, 28 years; my residence, Hot Springs, Garland county, Arkansas; my occupation, publisher of the Daily and Weekly Sentinel.

II. I have been connected with the Daily Sentinel since the 1st day of November, 1882, as owner and publisher.

III. The delinquent list of 1884 was published in the weekly edition of the Sentinel.

IV. The Sentinel was printed and published in the city of Hot Springs, Garland county. It had *being* so printed and published and had a *bona fide* circulation in the county for more than a month prior to that publication or the first of such publications. I had issued a weekly edition from the time of my connection with the paper to the present time and including the period mentioned.

V. I have examined the files of the Daily and Weekly Sentinel on the dates mentioned in interrogatory five and find that
222 the delinquent tax-list was published in the weekly edition on May 9th, 1885; May 16th, 1885, and May 23, 1885, but did not appear in the daily on either of said dates.

VI. To the best of my recollection, each publication was the same as that filed with the clerk in the proof of publication.

ELLIS WOOLMAN.

Endorsed: Opened & published by order of court February 8th, 1888. Ralph L. Goodrich, clerk.

223 *Opinion of Court.*

Circuit Court, Eastern District Arkansas, April, 1888.

RUFUS W. MARTIN
vs.
FRANCIS M. BARBOUR and Others.

U. M. & G. B. Rose, for plaintiff; John M. Harrell, for defendant.

CALDWELL, *J.*:

This is a proceeding under chapter 23d of Mansfield's Digest to confirm a tax title to lot 5, in block 145, and other lots and lands, not here in controversy, in the town of Hot Springs.

The lot was sold to the State on the 25th day of May, 1885, for the taxes of 1884, and at the expiration of two years, the period allowed by law for redemption, it was certified to the commissioner of State lands, and immediately thereafter purchased by the plaintiff from that officer.

The bill was filed in the Garland circuit court.

The defendants, Frances M. Barbour, a married woman, and her infant children, Howard P. Munger, Grace E. Munger, and Robert

P. Munger, by their next friend, Ormand Barbour, entered an appearance to the suit in that court and removed the cause to this court.

It is clear from the proofs that the lot belongs to Mrs. Barbour or to her and her children, unless the tax sale divested them of title.

The defendants allege the tax title is void for numerous reasons. The act of March 31, 1883, under which the tax title in judgment accrued, provides that the assessor before entering upon the discharge of the duties of his office shall take and subscribe the oath of office prescribed by the constitution for all officers, "and in addition thereto the following oath or affirmation, which shall be indorsed upon the assessment books prior to their delivery to the assessor." Here follows the oath, which is comprehensive and exacting, and contains the declaration that "all real * * * property * * * will be appraised at its actual cash value."

Section 5661, Mansfield's Digest.

Section 5662 declares: "If any person so elected fails or refuses to take the oath required in the preceding section and file the same with the clerk of the county court of his county within the time prescribed the office shall be declared vacant, and the clerk of the county court shall immediately notify the Governor, and such vacancy shall be filled in accordance with the constitution and laws of the State."

The defendants have shown that the oath here required is not "indorsed upon the assessment books" for the year 1883, nor can it be found elsewhere in the clerk's office.

This proof rebuts the presumption that it was taken, and imposes upon the plaintiff the burden of proving that it was. The burden the plaintiff has not discharged, and the conclusion must be the oath was not taken.

"Where a paper is not found where, if in existence, it ought to be deposited or recorded, the presumption arises that no such document has ever been in existence."

Platt *vs.* Stewart, 10 Mich., 260.

Hall *vs.* Kellogg, 16 *ib.*, 135.

In considering the legal effect of the failure of the assessor to take this oath, a brief reference to the legislation on this subject will be instructive.

From 1846 to 1868 sections 8 and 9 of chapter 148 of Gould's Digest were in force. These sections required the assessor, within a prescribed period, and before entering upon the duties of his office, to take the oath there set out, and vacated his office upon his failure to do so.

The act of July 23d, 1868, repealed these sections, and the only oath required of the assessor by that act was one to support the Constitution of the United States and this State, and it rewarded the assessor for his services by giving him "three per centum on the amount of taxes levied on his assessment."

Subsequent acts (act April 8th, 1869, sec. 60, and act March 25th,

1871, sec. 59) required the assessor to verify his return by an oath to the effect that he had "not appraised any lot or tract of land at less than its true value in money."

This oath was not in harmony with the constitutional requirement that property should be taxed at its value. It afforded no protection to the land-owner, but, on the contrary, its terms conveyed a strong implication that the assessor was licensed, if not invited, to assess land for taxation at more than its value, and loud complaints were made that it was so assessed.

In Radcliffe *vs.* Scruggs, 46 Ark., p. 96, it was decided that the failure of the assessor to take this oath did not affect the validity of the assessment, because it was "intended to protect the interests of the State rather than the tax-payer, * * * and no owner of real estate could have been injuried by its omission."

From 1868 to 1883 the only oath the assessor was required to take before entering on the duties of his office was the general oath of office prescribed by the constitution for all State and county officers.

Section 5105, Gantt's Digest.

The same section required that he should make oath "to his return" according to a form given, but this latter oath could only be taken after he had completed his assessment.

The act of March 31st, 1883, is the result of a complete revision of the revenue laws of the State. It was doubtless intended to harmonize the law on the subject with the constitutional requirement and correct the evil of excessive assessments that had grown up under previous legislation.

The Constitution requires that "all property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct * * *."

Art. 16, sec. 5, Const. 1874.

To carry out this provision of the constitution the act of 1883 requires the assessor before entering upon or discharging any of the duties of his office to take, in addition to the general oath of office, the searching and exacting oath set out in section 5661, Mansfield's Digest. A binding oath laid upon the assessor who is about to go forth to value property that he will appraise it at its actual cash value is probably the most usual and appropriate, if not the only means, the Legislature can provide to secure the taxation of property according to its value, as required by the constitution. It is undoubtedly one of the means provided by the Legislature for that purpose. The requirement is therefore in effect the same as if it had been imposed by the constitution itself. The oath is more comprehensive and exacting than that required by Gould's Digest.

Some of the provisions intended to preclude the assessor from exercising the duties of his office until he has taken the oath are not found in any other statute in this, nor is it believed, in any other State. The requirement that the oath "shall be indorsed upon the assessment books prior to their delivery to the assessor" appears first in this act.

It is the duty of the county clerk to make up the assessment book or roll of real estate in the county, showing each subdivision and the name of the owner.

(Section 5694, Mansfield's Digest.)

To this assessment book the assessor simply adds his appraisement of each lot and parcel of land.

This is the assessment book referred to in section 5661.

This book the clerk is required to make up and deliver to the assessor on or before the first Monday in February, but by section 5661 the clerk is forbidden to deliver, and the assessor to receive, this book until the required oath is taken; and that there may be no misunderstanding or doubt as to whether the oath has been taken, the law requires that it shall be indorsed on the book itself. A failure to take this oath within the time prescribed *ipso facto* vacates the assessor's office. Legislative ingenuity has exhausted itself in an effort to compel the assessor to take this oath or vacate his office.

These provisions were enacted in the interest of property-owners, and when the assessor refused to take the required oath and the clerk, in violation of law and his duty, delivered to him the assessment book, no assessment on that book can be made the foundation of a valid tax title.

If the law were otherwise no property-owner could ever hope to have his property appraised for taxation by an assessor bound by the obligations of an oath to appraise it at its value.

But in this forum this question is foreclosed by the judgment of the Supreme Court of the United States in Parker *et al. vs.* Overman, 18 Howard, 137.

That was a proceeding like the one at bar, and the tax title sought to be confirmed was held invalid because the assessor did not take the oath prescribed by sec. 8 of chapter 148, Gould's Digest, within the required time.

The court say: "The principle objection to the regularity of the sale in this case, and the only one necessary to be noticed, is that the land was not legally assessed. A legal assessment is the foundation of the authority to sell, and if this objection be sustained it is fatal to the deed. In order to qualify the sheriff to fulfill the duties of assessor, the statute requires that on or before the 10th day of January in each year the sheriff of each county shall make and file in the office of the clerk of the county an affidavit in the following form, etc., and if any sheriff shall neglect to file such affidavit within the time prescribed in the preceding section his office shall be deemed vacant, and it shall be the duty of the clerk of the county court without delay to notify the Governor of such vacancy. * * *

224 The record shows that Peyton S. Bethel, the then sheriff of the county of Dallas, did not file his oath as assessor on or before the 10th of January, as required by law. He did file an oath on the 15th of March, but this was not a compliance with the law and conferred no power on him to act as assessor. On the contrary, by his neglect to comply with the law his office of sheriff became

ipso facto vacated, and any assessment made by him in that year was void and could not be the foundation for a legal sale."

In Moore *vs.* Turner, 43 Ark., 243, Mr. Justice Eakin, referring to the case of Parker *vs.* Overman, *supra*, said: "Upon an appeal to the United States Supreme Court it was held that in such a proceeding, expressly provided to give every one interested an opportunity to contest the legality and regularity of every step in the proceedings, it might be shown that the preliminary affidavit was not filed in time. This is regarding the affidavit not as an oath of office but as a preliminary step to the assessment proceedings—a part, as it were, of the legal machinery—by which the revenue was to be collected or the citizen deprived of his property, and this is certainly the correct view of the case as our law then stood."

The law as it "then stood" and the law applicable to the case at bar are the same, save that the present law, for the better protection of the property-owner, amplifies the assessor's oath and adds new and stringent provisions intended to make it impossible for the assessor even to obtain the assessment books until he has taken the required oath. The word "deemed" in the old law and "declared" in the present act have the same meaning in the connection in which they are used. The failure to take the oath vacates *ipso facto* the office. The clerk is the maker and custodian of the assessment book until the assessor's oath is recorded upon it, and also filed in his office; and when the oath is not thus recorded and filed within the time prescribed by law he is required to "immediately notify the Governor, and such vacancy shall be filled."

No proceeding to vacate the office is provided for or contemplated. The exigency of the business will not admit of any such proceeding. It would be inconsistent with the dispatch indispensable to the making of a valid assessment.

Falconer *vs.* Shores, 37 Ark., 386.
Alston *vs.* Falconer, 42 Ark., 114.
Elsy *vs.* Falconer, *ib.*, 117.

The doctrine of the Supreme Court of the United States on this question finds support in the following cases:

Pike *vs.* Hanson, 9 N. H., 491.
Langdon *vs.* Poor, 20 Vt., 13.
Payson *vs.* Hall, 30 Me., 319.
Morris *vs.* Tinker, 60 Ga., 466.
Union Pacific Railroad Company *vs.* Donnellon, 2 Wy., 459.
Coite *vs.* Wells, 2 Vt., 218.
Isaacs *vs.* Wiley, 12 Vt., 674.
Ayers *vs.* Moulton, 51 Vt., 115.
Dresden *vs.* Goud, 75 Me., 298.

The list of delinquent lands and notice of sale were required "to be published weekly for two weeks," between the fourth Monday in April and the fourth Monday in May, 1885. (Act March 5, 1885, section 3 and section 5762, Mansfield's Digest.)

Section 5763, Mansfield's Digest, provides that "the clerk of the

county court shall record said list and notice in a book to be kept by him for that purpose, and shall certify at the foot of said record, stating in what newspaper said list was published and the date of publication, for what length of time the same was published before the second Monday in April then next ensuing, and such record so certified shall be evidence of the facts in said lists and certificates contained."

The clause of the section "then next ensuing" shows that this record is required to be made before the day of sale, but it was not so made and has never been made.

When the notice and proof of publication are required to be perpetuated by a record it is indispensable that it be so done, and parol evidence is inadmissible to supply the omission.

Kellogg *vs.* McLaughlin, 8 Ohio, 114.
Minor *vs.* McLean, 4 McLean, 138.
Langdon *vs.* Poor, 20 Vt., 49.
Iverslie *vs.* Spaulding, 32 Wis., 394.
Taylor *vs.* French, 19 Vt., 49.
Tolman *vs.* Hobbs, 68 Me., 316.
Burroughs on Taxation.
Black on Taxation, section 249.

Presumptions cannot supply the place of a record when the law requires one, nor can they help out a defective record.

Ib. and Cooley on Taxation (second edition), 480.

The plaintiff seeks in various ways to supply the record of the notice of sale and proof of its publication which the law requires to be made and which was not made.

Attached to copies of the delinquent list and notice of sale are certified copies of what the clerk terms in his certificate "the advertisement and proof of publication." An inspection of this proof of publication discloses the fact that the affidavit of the publisher of the paper in which the same was published was sworn to on the 9th day of November, 1887, two years and a half after the sale and several months after the suit was brought.

The certified copy has no file-mark upon it, but it was probably not filed before it was sworn to.

If such proof was competent it would not aid the plaintiff, because the proof of publication shows that the notice was published on the 16th and 23d days of May, 1885. The law required it "to be published weekly for two weeks," between the fourth Monday in April and the fourth Monday in May, 1885. The fourth Monday in May, 1885, was the 25th day of the month. The publication of the notice on the 16th and 25th days of May was not a compliance with the law. It is essential to the validity of a notice under this act that two weeks shall elapse between the first publication and the fourth Monday in May.

Pennell *vs.* Monroe, 30 Ark., 661.

In Thweat *vs.* Black, 30 Ark., p. 739, Chief Justice English, delivering the opinion of the court, said:

"The object of the advertisement is twofold: first, to notify the owners of the land or persons having an interest in it or charged with the duty of paying the taxes upon it that the taxes are unpaid and that the land will be sold for the taxes unless paid before the sale; and, second, to bring together competing bidders at the sale, etc. The advertisement is a prerequisite to the authority of the officers to sell and must be made in accordance with the requirements of the law. * * *"

In Bagley *vs.* Castile, 42 Ark., 77, it was held that an act which authorized the sale of delinquent lands without notice was unconstitutional.

Judge Cooley, referring to the notice of sale of delinquent lands, says: "Whatever the provision is, it must be complied with strictly. This is one of the most important of all the safeguards which has been deemed necessary to protect the interests of parties taxed, and nothing can be a substitute for it or excuse the failure to give it."

Cooley on Taxation (2d ed.), 483, and cases cited.

Where the notice is for less than the statutory time it is as fatal as if no notice had been given.

Ib., p. 484.

Black on Tax Titles, sec. 83.

Discovering this fatal error in his first effort to supply the unkept record, the plaintiff offers in evidence a certified copy of the affidavit of the publisher of the paper that the notice was published on the 9th, 16th, and 23d days of May, 1885.

This affidavit was sworn to on the 17th day of February, 1888, and filed in the county clerk's office on the 23d day of that month, and the copy offered here certified on the same day.

There is no copy of the delinquent list and notice published annexed to the certified copy of this affidavit, as required by law (sec. 4359, Mansfield's Digest); but the clerk certifies "that attached to the foregoing proof of publication is the same printed advertisement of tax sale copied in the transcript in reference to the assessment, collection, and sale for taxes of the year 1884, furnished U. M. and G. B. Rose, under my certificate and seal, on the 15th day of February, 1888."

Of course, this certificate is extra-official and proves nothing, and if the list and notice were attached it would prove nothing. Necessity sometimes justifies the use of *ex parte* affidavits in judicial proceedings, but they are an exceptionable species of proof not favored by the courts.

When competent at all, it is in the court where the suit is pending and where the opposing party can be heard to object or file counter-affidavits; but to allow the title to an estate to be changed by an *ex parte* affidavit filed in the clerk's office of another court long after the transaction to which it relates has been closed and suit brought, and without notice to the opposing party, would be intolerable. If that were the law, affidavit-making would rapidly rise to the dignity of a fine art, and a lucrative one.

In a country of law, titles do not hang on such a slender thread. If a tax title is bad in law it falls because it is so purely a technical, as distinguished from a meritorious, title that a court of equity will not lend its aid to correct the errors of officers that invalidate it.

Alles *vs.* Hinckler, 36 Ill., 265.
Keepfer *vs.* Force, 86 Ind., 81.
Bowers *vs.* Anderson, 52 Miss., 596.

It would be a singular perversion of the law on this subject if that which a court of equity cannot do, with all the parties before it, could be done by filing out of time an *ex parte* affidavit in the clerk's office. Making and placing these affidavits in the clerk's office more than two years after the tax sale did not make them a part of the record of the tax proceeding or of the official files of that office. They were placed there without authority of law and have no legal sanction.

225 The plaintiff next seeks to prove by the deposition of the publisher of the paper that the notice was published on the 9th, 16th, and 23d days of May; but no copy of the delinquent list or notice is made an exhibit to his deposition, and he only says: "To the best of my recollection, each publication was the same as that filed with the clerk in the proof of publication."

If they are the same it could easily have been shown, and ought to have been.

The deputy clerk, who had the custody of the tax books and special charge of matters relating thereto at the time, testifies that they "made it a point to keep the papers," and that the notice "was published twice—once on the 16th day of May, 1885, and the last on the 23d day of May, 1885."

If the notice was published on the 9th of May it is highly probable that that publication was for some reason fatally defective.

It is certain that it was disegarded by all parties at the time, and the publication on the 16th and 23d alone counted upon.

Why should the printer publish it on the 23d if it had been properly published twice before?

If parol evidence and *ex parte* affidavits were competent evidence it would boot the plaintiff nothing, because the clear weight of the evidence is that the list and notice exhibited were published on the 16th and 23d of May, and on no other day, but all such evidence is incompetent.

The law plainly prescribes how proof of such publication shall be made (sec. 4359, Mansfield's Digest), and in the case of notice of tax sales requires a record of them to be made and certified to by the clerk before the sale. (Sec. 5763, Mansfield's Digest.)

Until the notice prescribed by law has been given, the collector has no authority or jurisdiction to sell, and before he sells his jurisdiction to do so must be made to appear of record in the mode prescribed by law.

The supreme court of Wisconsin, in discussing this question, said: "The counsel for the plaintiff conceded that if the defect related to any matter which the statute required should be recorded, then

parol evidence would be inadmissible to supply the omission; but we think the same rule should be applied to the affidavits, under the circumstances, that would apply to a statement which the law requires should be recorded, for these affidavits constituted in fact a part of the record of the tax proceedings, and may have been examined by the original owner, who failed to redeem solely for the reason that he discovered there was no record evidence that any proper notice of sale had been given by the county treasurer."

Iverslie *vs.* Spaulding, 32 Wis., 394.

The rule is the same in this case that it is in cases where it is sought to conclude a party by constructive service by publication. The rule is stated by this court in Cissell *vs.* Pulaski County, 3d McCreary, p. 449, in these terms:

"It is a rule, without qualification or exception, that when it is sought to conclude a party by constructive service—by publication—a strict compliance with the requirements of the statute is required, nothing can be taken by intendment, and every fact necessary to the exercise of jurisdiction based on this mode of service must affirmatively appear in the mode prescribed by the statute.

"Gray *vs.* Larrimore, 4 Sawy., 638-646; Steinbach *vs.* Lesse, 27 Cal., 295; Staples *vs.* Fairchild, 3 N. Y., 43; Payne *vs.* Young, E. N. Y., 158; Hill *vs.* Hooper, 5 Wis., 371; Galpin *vs.* Page, 3 Sawy., 93; S. C., 18 Wall., 350; Settlemier *vs.* Sullivan, 97 U. S., 444.

"It is not competent for this court to receive parol testimony to supply the omission. Gray *vs.* Larrimore, *supra;* Noyes *vs.* Butler, 6 Barb., 617; Lawry *vs.* Cady, 4 Vt., 506."

The case of Commissioners *vs.* Morrison, 22 Minn., 178, is in conflict with the current authorities on this question. The doctrine of that case cannot possibly be the rule under a statute like that in this State.

The revenue law provides that if no person bids the amount of the tax for the delinquent land at the tax sale the collector shall bid the same off in the name of the State. (Sec. 576, Mansfield's Digest.)

The clerk is required to attend the sale and record in a "book to be kept for that purpose each tract of land, town or city lot, sold to the State, together with the taxes, penalty, and cost due thereon." (Sec. 5769, Mansfield's Digest.)

The clerk is required to, "immediately after the sale, transfer upon the tax books all lands sold for taxes to the name of the purchaser," (Sec. 5771, Mansfield's Digest), and "all lands and town lots sold for the payment of taxes shall be thereafter assessed in the name of the purchaser," except that when the State is the purchaser they are no longer assessed or subject to taxation, but are taken off the tax books and entered in the book of State lands, which the clerk is required to keep. (Sec. 5769, Mansfield's Digest.)

If the town and city lots are not redeemed within two years from the date of sale the commissioner is authorized to sell them at private sale for the exact sum for which they were bid in by the State. (Sec. 4275, Mansfield's Digest.)

The lot in controversy was bid in by the State for $110.95, and two years afterwards the State sold it to the plaintiff for that sum. But if the former owner desires to redeem within two years after the sale he is required to pay what the State bid "and the taxes which would have accrue d thereon if such land or lot had been continued on the tax book and the taxes extended." (Section 5779, Mansfield's Digest.)

As the constitution provides that property shall be taxed by a uniform rule, both as to rate and mode of assessment, and as an assessment is essential to the imposition of a tax, there would seem to be some embarrassment in giving effect to this requirement.

How is it to be known what the property would have been assessed at and what the taxes would have been? But for the purposes of this case it will be assumed that the provision is valid.

If the lot is sold by the commissioner of State lands after the expiration of the redemption the State gets no taxes for the intervening years between the purchase at the tax sale and the sale by the State, because during that period it is treated as the property of the State, and the officers are forbidden to put it on the assessment book.

In some States the purchaser at a tax sale cannot obtain a deed under his purchase until he has given the former owner notice of his purpose to apply for one.

Black on Tax Titles, section 180.

The object of such a law is to give to the former owner, who may be ignorant of the fact that his land has been sold for taxes, an opportunity to redeem it. The law in this State works out the same result by a different method. "Immediately" after the tax sale the land is required to be transferred on the tax books to the name of the purchaser, if an individual, and when bid in by the State it is taken off the tax books altogether and entered on the books of non-assessable State lands.

When one whose lot has been sold to the State for taxes without his knowledge goes to pay his taxes the next year, if the clerk has done his duty, the owner is confronted with the fact that he has no lot to pay taxes on; that it has been sold to the State for the taxes of the previous year. Under the law he has the opportunity two years in succession to be thus advised, for two years' taxes accrue and are due, before the expiration of the right of redemption.

The fact that land is delinquent by no means proves that the owner has knowingly been guilty of any neglect or dereliction of his duty to the State. The delinquency may have resulted from fraud, accident, or mistake, for which the owner is not to blame.

The facts in the case at bar illustrate this truth.

The property in controversy is a boarding-house or hotel, valued at $7,000 or $8,000. The owner resided in a distant State and had a local agent to collect the rents and pay the taxes. That agent was provided with funds to pay the taxes of 1884, as had been done in previous years. The owner supposed the taxes were paid, but it

now turns out that the agent appropriated the money to his own use and left the State without paying the taxes of that year.

The owner employed another agent, who was provided with the necessary funds and directed to pay all taxes on the lot.

The agent applied at the collector's office in apt time to pay all taxes due in 1885, and paid the sum of $105.50, which was all the collector demanded or that his books showed to be due.

The same thing was repeated in reference to the tax of 1886, amounting to $96, which was paid by the agent, and was all that appeared to be due. Neither the owner nor her agent knew of the forfeiture for the taxes of 1884 until the expiration of the period allowed by law for redemption, and the plaintiff had procured his deed. The agent of the owner had the means and would have redeemed the lot if he had been advised of the sale.

That he was not advised of it was owing to a dereliction of official duty on the part of the county clerk. If that official had done his duty and transferred the lot to the State and taken it off the tax book, the agent, when he went to pay the taxes for 1885, would at once have discovered the forfeiture and redeemed the lot.

The clerk was guilty of the same dereliction of official duty in 1886, for he put it on the tax books for that year, and the agent again paid the taxes in ignorance of the forfeiture.

226 Upon this state of facts it cannot be maintained that it was the owner's own fault or negligence that she paid two years' taxes on property not subject to taxation and for which she was in no manner liable, and that for the taxes of these years she has only a remedy against the State for taxes erroneously paid.

Under that view of the case the plaintiff gets the lot for $110.95, free from the taxes of 1885 and 1886; the State has to pay back the taxes for those years, amounting to $201.50, which is just $90.95 more than she got for the lot when she sold it to the plaintiff, and the defendant loses her property, and if she does not get back the $201.50 paid the State she loses that sum also, and these startling results are due solely to neglect of an official duty by a public officer.

Mistakes or misconduct of officers connected with the assessment and collection of the public revenue are never permitted to work such inequitable and unjust results.

The mistake and error of the clerk prevented redemption within the time prescribed by the statute, and the law gives the owner a reasonable time after discovering the mistake to make the redemption. The clerk is not the owner's agent, but the agent of the State (Kellogg *vs.* McLaughlin, 8 Ohio, 114), and the State, no more than an individual, can take advantage of the mistakes of one of her public officers to possess herself of the citizen's land.

The principle here involved is clearly stated by the supreme court of Pennsylvania in Baird *vs.* Cahoun, 5 Watts & Seargeant, 540.

"We are of opinion that the court below erred in charging the jury that it was immaterial whether the non-payment of the taxes was owing to the neglect of the agent or of the treasurer, or of both, as we think the determination of the case must depend upon that

question. The officer has duties to perform as well as the owner when the latter comes to him to pay up the taxes on his unseated lands. Various acts or omissions of the officer may occur, constituting such neglect on his part that the owner ought not to suffer by it, which cannot be defined beforehand, but must depend upon the particular circumstances of each case."

And in Bubb *vs.* Tompkins, 47 Pa. St., 359, the court said: "The owner came in proper time to the proper officer, the county treasurer, and offered to pay all charges that were against the land, and it was by mistake of the officer that he did not pay all. * * * His redemption is not invalidated by the mistake of the public officer. It was very natural to trust him—most people do—and the law cannot declare such trust wrong."

The county clerk makes and keeps the record of the sale of delinquent lands for taxes; he makes and keeps the record showing the lands bid in by the State for taxes, and he makes up the assessment book of real estate, and is enjoined by law not to put such lands on it, and certainly if he does their previous forfeiture ought to be noted.

When he put the lot in controversy on the tax books for 1885 and again for 1886 without noting the previous forfeiture it amounted to a solemn declaration of record, repeated in each of those years, that it had not been forfeited for taxes, and that no delinquent taxes were due upon it.

The owner and her agent had a right to presume that the clerk had done his duty.

On these facts the owner is entitled to redeem on paying the amount bid by the State, with interest from that date.

Cooley on Taxation, 532–540.
Black on Tax Titles, sec. 52.
United States *vs.* Lee, 106 U. S., 196.
Price *vs.* Mott, 52 Pa. St., 315.
Corning Town Co. *vs.* Davis, 44 Iowa, 628.
Laird *vs.* Heister, 24 Pa. St., 452.
Dietricth *vs.* Mason, 57 Pa. St., 40.
Van Benthuysen *vs.* Sawyer, 36 N. Y., 150.
Gage *vs.* Scales, 100 Ill., 218.

If this was a case where one of two innocent parties must suffer by the wrongful act of a third, the State would have to bear the loss resulting from the misconduct of her own agent.

Conway Co. *vs.* L. R. and Ft. S. Railroad Co., 39 Ark., 50.
Jiska *vs.* Ringgold Co., 57 Iowa, 630.

But this is not that kind of a case. Here the owner and the State both lose by the official misconduct of the officer. If it is overlooked and the sale held valid, the owner loses the lot and the State two years' taxes on it. On the other hand, if the sale is void by reason of the clerk's error, the State gets all her taxes, the owner keeps her lot, and the purchaser loses nothing, because he gets back his purchase-money, with interest, from the owner.

The right to redeem may be rested on another ground. It is obvious that the State has no right to the two years' taxes if she denies the former owner's right to redeem and stands on her purchase at the tax sale. The money paid for the taxes of the two years was paid to the same officer and was distributed in the same way it would have been if it had been paid on a technical redemption of the property; and the full amount required to make redemption not having been paid by reason of the mistake or misconduct of the clerk, equity will treat it as so much paid towards redemption and will permit the owner to perfect the redemption on discovering the mistake. *Ib.*

The rule of *caveat emptor* applies to the purchaser of a tax title. He is not a *bona fide* purchaser for value without notice.

For such titles the commissioner is directed to "execute to the purchaser a quitclaim deed." (Sec. 4245, Mansfield's Digest.)

The purchaser takes the land in the same plight the State held it, and subject to the same equities and defenses.

Cooley on Taxation (2d ed.) 475, '6–553.

2 Desty on Taxation, 850.

The learned counsel for the plaintiff has pressed upon the attention of the court the case of Moore *vs.* Turner, 43 Ark., 243.

That case arose on a petition of a single taxpayer for a writ of certiorari to quash the tax levy for the county after most of the taxpayers had paid their taxes. The learned judge who delivered the opinion of the court referred at some length to questions relating to the validity of assessments, but these remarks must be held to apply to the case then before the court. The learned judge himself does this on page 252 by calling attention to the difference in the rules of decision between the case then before the court and a contest "between A and B for the ownership of a particular piece of property alleged to have been improperly sold for taxes."

And by reference to page 262 of the opinion it will be seen the judgment of the court is rested on and the case only authority for the doctrine that the writ of certiorari is not a writ of right, but one to be granted or refused in the discretion of the court, and that in the exercise of this discretion a circuit court may rightfully refuse to issue the writ on the petition of a single taxpayer to quash the tax levy for a county, no matter how irregular the assessment and levy may be.

In the case at bar the holder of the tax title has chosen to proceed in equity for a confirmation of his title under a statute which provides that if "it shall appear that the sale was made contrary to law it shall be the duty of the judge to annul it."

Section 579, Mansfield's Digest.

The plaintiff cites and relies on the provision of sec. 5782 of Mansfield's Digest, which provides that one claiming title adverse to a tax "deed shall be required to prove that there had been an entire omission to list or assess the property or levy the taxes or to give notice of the sale * * *" It is argued that under this section a

single hour's notice of sale is sufficient, and it would seem to follow logically that it might be given by oral proclamation on the street or posting a notice on a tree in the forest.

The affidavit and record of the proof of publication of notice of sale not having been made and kept in the time and manner required by law, and no other evidence being competent to prove the publication, it is an indisputable presumption of law that no notice was given. Besides, the intensifying adjective "entire" adds nothing to the legal effect of the section. A failure to give the two weeks' by five days is, in contemplation of law, an "entire" failure to give the notice required by law. This section worked no change in the law. The limits of legislative power in this direction are stated by the supreme court of this State in Cairo and Fulton Railroad Co. *vs.* Parks, 32 Ark., 131, and with great precision and perspicuity in Radcliffe *vs.* Scruggs, 46 Ark., 96.

The provision under discussion is not as broad in its scope and design as the statute of limitations of two years (section 5791, Mansfield's Digest), construed by the court in Radcliffe *vs.* Scruggs, and in construing which the court, speaking by Mr. Justice Smith, said:

"Neither the validity nor the construction of this statute has been settled by previous decisions of this court, further than it does not operate to deprive the former owner of any meritorious defence; and by meritorious defence we mean any act or omission of the revenue officers in violation of law and prejudicial to his rights or interests, as well as those jurisdictional and fundamental defects which affect the power to levy the tax or sell for its non-payment.

But while the act cannot have the free course that its framers intended, it is still our duty to give it such effect as may be consistent with legal and constitutional principles.

And this may be best accomplished by restricting its operation to mere irregularities or informalities on the part of officers having some duty to perform in relation to the assessment and levy of taxes or sale.

227 Our legislation and previous decisions have always distinguished between this class of defects, which have no tendency to injuriously affect the taxpayer, and substantial defects, such as go to the jurisdiction of the levying court to levy a particular tax, or of the power of the officer to sell for non-payment, or the omission of any legal duty which is calculated to prejudice the land-owner."

It is obvious that the defenses pointed out to the tax title in suit in this case are "meritorious," as that term is defined by the court in Radcliffe *vs.* Scruggs and by the weight of authority, and that the Legislature cannot deprive the property-owner of such defenses without, in the language of Mr. Justice Smith, "transcending the boundaries of its power."

Davis *vs.* Mingo, 56 Ala., 121.

Stoudemire *vs.* Brown, 57 Ala., 481.

Cooley on Taxation (2d ed.), 298, '9, 521, and cases cited and notes.

Black on Tax Titles, section 253.

The question whether Mrs. Barbour as a married woman has not a right to redeem without regard to the validity of the sale, and whether her infant children have not an interest in the lot which would entitle them to redeem under the statute, and objections to the validity of tax sale other than those passed upon are not decided.

Let a decree be entered declaring the plaintiff's deed void, giving him a lien on the lot for the purchase-money and interest, and directing the sale of the lot unless the amount is paid into the registry of the court for his use within twenty days, and that the plaintiff pay all costs.

228 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings, annexed to this certificate, are true, correct, and compared copies of the original remaining of record in my office.

The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this 17th day of May, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and twelfth.

Attest: RALPH L. GOODRICH, *Clerk.*

Costs of transcript, $62.20, paid by appellant.

229 In the United States Circuit Court for Eastern District of Arkansas.

R. W. MARTIN, *ex Parte*, Petitioner, }
vs.
ORMOND BARBOUR, Respondent. }

The attorneys of the above-named parties stipulate and agree that the subjoined abstract of title, made by them from the record of deeds and mortgages of Garland county, Ark., be read as evidence on the part of respondent in lieu of certified copies of the deeds recorded, showing the claim of title to lot five (5), in block one hundred and forty (140), of the U. S. reservation of the Hot Springs, in Arkansas, as said lot is laid off and platted on the official map of said reservation on file in the U. S. Land Office.

(Signed) U. M. & G. B. ROSE,
Sol's for Petitioner.
JOHN M. HARRELL,
Sol. for Respondent.

Dated Feb'y 18th, 1888.

Certificate of Award of Hot Springs Commission
to
John J. Adams, Jay L. Adams, William H. Renard, and Edward C. Adams.

Certificate dated Dec. 2nd, 1879. Appraisement, $200.00; reduced by act of Congress, June 16th, 1880, 60 per cent. See "letter of Secretary of Interior, Senate Doc. 21, 46th Congress, 2nd *series*."

United States of America
to
John J. Adams, Jay L. Adams, Wm. H. Renard, and Edw'd C. Adams.

Patent certificate No. 547. Dated May 10th, 1882. Recorded vol. 2, p. 49, U. S. General Land Office; recorder's office, Garland Co., Book "M," p. 70.

John J. Adams & Wife and Wm. H. Renard & Wife
to
Robert Thompson.

Warranty deed. June 2nd, 1880. Duly acknowledged by all the grantors. Recorded June 15th, 1880, Book "E," pp. 475 & 476. Consideration, $800.00. Cash payment.

230 Edward C. Adams & Wife
to
Robert Thompson.

Quitclaim deed. June 27th, 1883. Acknowledged by both grantors in due form. Recorded Oct. 23rd, 1883, in Book "M," Garland County Records, pp. 68 & 69. Consideration, $1.00 and $800. Paid to John J. Adams & Co.

Robert Thompson
to
Emma Layley.

Quitclaim deed. March 10th, 1882. Recorded March 16th, in Garland County Records, Book "H," p. 426. Consideration, $10,000. Grantor unmarried.

John L. Adams and Helen Adams, his Wife,
to
Emma Layley.

Quitclaim deed. Dec. 1st, 1883. Acknowledged in due form. Recorded Oct. 23rd, 1883, in Garland county, Book "M," p. 72. Consideration, $400.00.